A HISTORY

OF THE BRITISH CONSTITUTION



MACMILLAN AND CO., LIMITED
LONDON · BOMBAY · CALCUTTA · MADRAS
MELBOURNE

THE MACMILLAN COMPANY
NEW YORK · BOSTON · CHICAGO
DALLAS · SAN FRANCISCO

THE MACMILLAN CO. OF CANADA, LTD.
TORONTO

A HISTORY

OF THE

BRITISH CONSTITUTION

BY

J. HOWARD B. MASTERMAN

VICAR AND SUBDEAN OF S. MICHAEL'S COLLEGIATE CHURCH, COVENTRY
SOMETIME PROFESSOR OF HISTORY IN THE UNIVERSITY OF BIRMINGHAM

MACMILLAN AND CO., LIMITED
ST. MARTIN'S STREET, LONDON
1920

First Edition February 1912
Reprinted 1913, 1916, 191[illegible], 1920

PREFACE

I HAVE tried to write a Constitutional History that shall be intelligible to any one who knows the outlines of English history. Constitutional issues are likely to be more rather than less prominent in the near future, and I should like to hope that this sketch of the development of our political institutions may lead some of those who read it to a more detailed study of our Constitutional system. I have added a bibliography which, while not pretending to be exhaustive, includes most of the books likely to be of service to students.

In the effort to bring the story down to our own times I have been obliged to touch on some controversial matters, but I have tried to deal with them as a historian, not as a partisan.

J. HOWARD B. MASTERMAN.

COVENTRY, *December* 1911.

CONTENTS

CHAPTER XV

CHAPTER XVI

CHAPTER XVII

CHAPTER XVIII

CHAPTER XIX

CHAPTER XX

CHAPTER XXI

CHAPTER XXII

CHAPTER XXIII

CHAPTER XXIV

CHAPTER XXV

CHAPTER XXVI

CHAPTER XXVII

CHIEF DATES OF ENGLISH CONSTITUTIONAL HISTORY

829. Egbert becomes overlord of all England.

959-75. Reign of Edgar. Reorganization of the country after the Danish struggles.

1066. Norman Conquest.

1086. Great Assembly at Salisbury.

1100. Henry I. *in regem electus est.* Charter of Liberties issued.

1154. Accession of Henry II.

1164. Council of Clarendon. The Constitutions of Clarendon drawn up.

1166. Assize of Clarendon. Itinerant Justices.

1176. Assize of Northampton.

1215. The Great Charter.

1254. First writ of summons of knights of the shire to a Council.

1258. Provisions of Oxford, establishing a committee of barons to advise the king.

1265. Simon de Montfort's Parliament, including representatives of the boroughs.

1295. "Model Parliament."

1297. The Confirmation of the Charters.

1327. Deposition of Edward II. (who also resigned).

1352. Statute defining treason.

1376. The "Good Parliament." Beginning of Impeachment.

1399. Deposition of Richard II. Henry IV. succeeds with Parliamentary title.

1400-14. Fresh claims asserted by the Commons. (1401, Freedom of speech claimed; 1406, Audit of accounts; 1407, Control of money grants; 1414, Right to present bills in place of petitions.)

1422. Henry VI. Council of Regency independent of Parliament. Decline of Parliament.

1430. County franchise limited to forty-shilling freeholders.

1485. Henry VII. succeeds by Parliamentary title.

1486. Court of Star Chamber appointed. Statute of Liveries re-enacted and enforced.

1523. Resistance of Commons to Wolsey's demand for grant.

1529. Meeting of Reformation Parliament. Fall of Wolsey.

1534. Statutes of Annates and Appeals. Act of Supremacy.

1535. Cromwell Vicar-General. Execution of More and Fisher.

1536-39 Suppression of the monasteries.

1539. The *Lex Regia*, giving royal proclamations the force of law.

1559. Elizabethan Acts of Supremacy and Uniformity.

1601. Debate on monopolies. Concessions by queen.

1603. Accession of James I. by hereditary right.

1604. The Apology of the Commons. Goodwin's case, involving right to try election returns.

1606. Bates's case, involving royal right to levy impositions.

1608. Calvin's case, all Scotsmen born after 1603 declared naturalized.

1610. Failure of Great Contract.

1616. Dismissal of Lord Chief Justice Coke.

1621. Impeachment of Mompesson, and of Bacon.

1621. Last Parliament of reign. Monopolies declared illegal.

1625. Accession of Charles I. Attacks in Parliament on Buckingham.

1626. Attempted impeachment of Buckingham. Parliament dissolved.

1628. Petition of Right.

1629. Sir John Eliot's three resolutions.

1637. Ship-money case.

1640. Meeting of Long Parliament. Impeachment of Strafford.

1641. Triennial Act. Abolition of Star Chamber, etc., and of non-Parliamentary taxation. Execution of Strafford. The Grand Remonstrance (November).

1642. Attempt to seize five members. Army Bill (January). Outbreak of war (July).

1649. Death of the king.

1653. Rump of Long Parliament dissolved by Cromwell (April). "Barebones" Parliament (July). Instrument of Government (December).

1657. The Humble Petition and Advice.

1660. — —

1661. Corporation Act. Act of Uniformity, 1662.

1667. Fall of Clarendon.
1673. Declaration of Indulgence. Withdrawal. Test Act.
1678. "Papist Plot." Impeachment of Danby. Dissolution of Pensionary Parliament (January 1679).
1679. Habeas Corpus Act. Lapse of press censorship.
1681. Struggle over Exclusion Bill. "Whigs" and "Tories."
1685. Accession of James II.
1688. Trial of seven bishops (June). Invitation to Prince of Orange. Convention meets (December).
1689. Declaration of Right (February). William and Mary made joint sovereigns. Toleration Act (May).
1694. Triennial Act (Parliament not to last more than three years).
1701. Act of Settlement.
1707. Act of Union with Scotland.
1710. Tory reaction begins. Marlborough dismissed, 1712. Peace of Utrecht, 1713.
1714. Death of Anne. George I succeeds.
1716. Septennial Act.
1719. Peerage Bill, defeated by influence of Walpole.
1742. Resignation of Walpole.
1760. Accession of George III. Bute introduced as royal representative in Cabinet.
1763. Grenville's ministry. Wilkes's case, 1764.
1765. Stamp Act, taxing American colonies (February). Rockingham ministry (July).
1766. Grafton composite ministry. Illness of Pitt and virtual retirement, 1767.
1770. Lord North's ministry.
1782. Rockingham's second ministry. Civil List Act. Contractors Act. Repeal of Poyning's law in Ireland. Coalition of Fox and North.
1783. Fox's India Bill rejected by Lords through royal influence, Pitt Prime Minister.
1787. Impeachment of Warren Hastings (lasts till 1795).
1788. Regency question. King recovers.
1791. Fox's Libel Act.
1800. Act of Union with Ireland. Resignation of Pitt, 1801.
1806. Death of Pitt. "Ministry of All the Talents."
1829. Catholic Emancipation.
1832. First Reform Act.
1835. Municipal Corporations Act.
1838. Mission of Lord Durham to Canada.

1840. Canadian Union Act. (Responsible ministry in 1847.)
1858. Government of India assumed by crown.
1860. Controversy between Lords and Commons over Paper Duties.
1861. First Budget.
1867. Second Reform Act. British North America Act. (Canadian Federation.)
1869. Disestablishment of Irish Church.
1872. Ballot Act.
1885. Third Reform Act.
1886. First Home Rule Bill.
1888. County Councils Act.
1893. Second Home Rule Bill.
1894. Parish Councils Act.
1900. Australian Commonwealth Act.
1909. South African Union.
1910. Rejection of Budget by House of Lords.
1911. Parliament Act.

- The Witenagemot.
  - The Norman Great or Common Council (an assembly of feudal tenants-in-chief).
    - The Great Council (including knights and burgesses), 1295.
      - House of Lords, c. 1330.
      - House of Commons, c. 1330.
    - The Ordinary or Perpetual Council c. 1100.
      - The King's Council, c. 1250.
        - The Privy Council, c. 1400.
          - The Cabinet.
          - The Judicial Committee, 1833.
          - Other "Boards":
            - Board of Trade, 1786.
            - Board of Education, 1839.
            - Board of Works, 1851.
            - Local Government Board, 1871.
            - Board of Agriculture, 1889.
        - The Court of Chancery, c. 1350.
      - The High Court of Justice, c. 1150.
        - King's Bench, c. 1250.
        - Common Pleas, c. 1250.
        - Exchequer. c. 1250.

TABLE TO ILLUSTRATE THE DEVELOPMENT OF THE COUNCIL.

CHAPTER I.

INTRODUCTION

In as far as the course of English Constitutional History can be summarized in a phrase, it may be described as a *drift towards democracy*. I call it a drift rather than a progress, because the development of our political institutions has not been along the lines of any preconceived theory. Changes have been made to satisfy practical needs as they arose, and institutions have been adapted to meet altered conditions by an almost unconscious process that resembles the organic processes of nature. As a result, our political institutions, at any given period of history, "are not what they seem."

The value of precedent.

In part, this is due to a distrust of theory that seems ingrained in English character. The very word "theorist" is often a term of reproach among us. In part, also, it is due to the strong conservatism which is another of our national characteristics. Even when the actual character of an institution has changed, we retain old forms wherever possible. Hence precedent plays a part in our legal and political life greater, I suppose, than is the case with any other European nation. Innovations must justify themselves by appeal to the past. One of many reasons why a modern Town Council is a more effective body than a Board of Guardians is that it gathers up vague far-off traditions of the old Port-moots of early Plantagenet days.

Government by consent.

The idea of government by general consent, brought by our forefathers from their German forests, has never died out of English life. Feudalism introduced the idea of a governing class, but with an underlying assumption of unity of interest—an assumption which, while land was the only source of wealth, corresponded fairly well with the facts. In this respect there is a close resemblance between the eleventh century and the eighteenth. In both, a small body of landowners controlled the administrative machinery in the interest of the whole body of landowners. In both, the crown was supported by those elements of national life that were not directly connected with the land, and in both the development of town life changed the course of political history.

Its feudal and national expressions.

The great nobles of the Norman and early Angevin times would, if they could, have reduced the king to the position of a feudal overlord, cut off from direct authority over the mass of the people by intervening grades of feudal order. That they failed to do so was due to the fact that the Anglo-Saxon period had taught the English freeman to regard the King as a national officer, and that William the Conqueror and Henry I. had the sagacity to recognize and encourage this feeling. As a result, an informal alliance between the crown and the people grew up. When the chartered towns began to develop a local political life based not on land but on trade and industry, it was to the crown that they turned for support. But it was not through any wish of their own that the Commons began to play a part in national affairs, but because the crown called them in to "redress the balance" of feudal oligarchy. Throughout the Middle Ages political representation was regarded as a burden rather than a privilege.

It was Edward I.'s supreme title to greatness that he recognized that the feudal expression of the idea of government by consent must give place to the national. In the writs of summons to the Model Parliament of 1295, he reasserted the fundamental principle of the old Teutonic assembly—"that common danger should be met by means devised in common."

For a time King and Commons were able to hold the great feudal magnates in check, but in the fifteenth century the weakness of the crown and the local influence of the great nobles, which enabled them to "pack" the House of Commons with their supporters, brought about a condition not unlike that of the days of Walpole. But just as the Whig oligarchy of the eighteenth century forfeited its supremacy through its internal dissensions, so the oligarchy of the fifteenth century destroyed itself in the Wars of the Roses.

Under the Tudors the old alliance of crown and Commons was renewed. The doctrine of government by consent was never more clearly stated than by Sir Thomas Smith in the time when the power of the Tudor dynasty was at its height: "Every Englishman is intended to be present (in Parliament) either in person or by procuration and attorney . . . from the prince to the lowest person of England. And the consent of Parliament is taken to be every man's consent." Two hundred years later Blackstone lays down the same doctrine in a well-known passage: "If it were probable that every man could give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing those delegates to whose charge is committed the disposal of his property, his liberty, and his life." Under the Tudors.

Before the end of the Tudor period the danger of oligarchic supremacy had passed, and the Commons were now confronted with the danger of royal despotism. Fortunately for the nation, the Parliaments of the early Stuart period were much more representative and independent than those of the eighteenth century, for many of the towns had not yet become pocket-boroughs, and in the counties the forty-shilling freeholder still occupied a position of independence.

Influence of executive.

From the time of the Restoration the legislative authority of Parliament was no longer openly challenged, but the executive was able to control where it could no longer coerce, by the exercise of the patronage and financial resources of the crown in the purchase of seats and the buying of votes. The undue strength of the executive constituted the special danger against which the Whig party was in constant protest in the latter half of the eighteenth century. In the words of Dunning's celebrated resolution: "The influence of the crown has increased, is increasing, and ought to be diminished." But the difficulty that confronted the Whigs was that any effective measures designed to curtail the power of the crown were likely also to curtail their own. It was only with great reluctance that the Whig mind came round to the idea of Parliamentary Reform.

The opponents of reform claimed that the House of Commons of the eighteenth century did in fact represent very well the various interests that made up the life of the nation. Canning "valued the existing system of Parliamentary representation for that very want of uniformity which is complained of — for the variety of right of election."

Another strong objection to any drastic reform was that

it would disturb the relations between the various constituent elements of the Constitution. "There is no man," said the Duke of Wellington, "who considers what the government of King, Lords and Commons is, and the details of the manner in which it is carried on, who must not see that government will become impracticable when the three branches shall be separate, each independent of the other, and uncontrolled in its action by any of the existing influences."[1]

But the control that King and Lords exercised over the House of Commons depended on exactly those anomalies that the more ardent reformers desired to sweep away.

It was the Industrial Revolution that forced the question of reform to the front, by creating a new industrial world in the north and midlands. The landed interest was no longer the predominant interest in a nation that had become "the workshop of the world." The House of Lords was, speaking generally, a house of landowners, for the great captains of industry had hardly begun to find a place there. It was therefore the more necessary that the great towns should be adequately represented in the Lower House. Parliamentary Reform.

The Reform Act of 1832 was not intended to make any fundamental change in the Constitution. It corrected the worst abuses in the existing political system. It did, and was meant to do, no more. Its importance lay in its indirect results. In place of a system that had grown up through a process of historical development, it introduced a system based on a purely arbitrary process. Certain classes were enfranchised; certain boroughs gained or lost members. But all this lacked the note of finality. 1832.

[1] Quoted by Lowes Dickinson, *The Development of Parliament in the Nineteenth Century*, p. 11. I am indebted to this book for a good deal of the matter that follows

The earliest organized advocates of a pure democracy were the Chartists; and after the collapse of Chartism in 1848, economic prosperity and the attractions of a "spirited foreign policy" led men's thoughts, for a time, away from aspirations for constitutional change.

1867. The various schemes of Parliamentary Reform that preceded the Reform Act of 1867 were indications not of an overwhelming popular demand, but rather of a desire by both political parties to strengthen their hold of the country by posing as the friends of the unenfranchised classes. Finally, in 1867 an attempt was made to base the franchise, as far as the boroughs were concerned, on the definite principle of the Household unit. But the introduction of a lodger franchise made a breach in the new principle at the very moment when it was established.

"The Act of 1867 was a tremendous step in the direction of democracy, taken by men who appear to have realized very inadequately the [illegible] of the change that they were making. Among the political leaders of the time, Robert Lowe alone saw clearly that the Act of 1867 was not so much a reform as a revolution. He predicted that it would be followed by 'the abolition of indirect taxation, the graduation of the income tax, and the restriction of the hours of labour by law', and he prophesied 'the devolution of both Tories and Whigs into 'two parties of competition,' who, like Cleon and the sausage seller of Aristophanes, will both be bidding for the support of Demos."[1]

1884. The Reform Act of 1884 was the inevitable corollary of that of 1867, for the extension of the Household franchise to the counties was bound to follow its adoption in the boroughs.

[1] Lowes Dickinson, p. 64.

The propertied classes (the phrase is convenient but objectionable) still retained three strongholds of influence, and of these three two are being gradually undermined. The first of these strongholds of influence was the House of Lords, which had come to represent property rather than noble birth. But the House of Lords has ceased to claim any other right than that of referring questions to the people, and even this has been denied it by recent legislation. Then secondly, the heavy cost of an election, and the fact that members of Parliament were unpaid, gave to men of wealth a considerable advantage as Parliamentary candidates, and the process of "nursing a constituency" by subscriptions to football clubs, local charities, etc., still bears fruit in due season in many constituencies. But these advantages are likely to count for less when members are paid, election expenses reduced, and electors trained in habits of self-respect. The influence of property.

There will then remain as the sole asset of the 'propertied classes' the larger opportunities of service that wealth affords. A "leisured class" will have to justify its existence in the future by being the most effectively useful class in the community.[1]

The drift towards democracy is now nearly complete. But will democracy work? In the view of a large and probably increasing body of men democracy is regarded as a means to an end, and the end is the readjustment of the whole existing system of property. While the subject of socialism, in all its various forms, lies definitely outside the scope of this volume, democracy is a system of government, and as such demands examination by a constitutional Democracy

[1] "The British Empire requires at the present time hard service from all its sons. It requires the hardest service from those to whom most has been given."—King George V. to Eton boys.

historian. It is the latest attempt to give expression to the idea of government by consent. But government by consent is not equivalent to government by a bare majority, still less to government by the majority of the moment. That is the great defect of the Referendum as a constitutional expedient. What we want to reach is not the chance impulse of a numerical majority, but, if we can, the permanent will of the community—what Rousseau calls the "general will" as distinguished from the "will of all."[1] We have supposed that some approximation to this general will can be reached by the representative system—that members of Parliament may express the nobler and more permanent feelings and aspirations of their constituents.[2] But the modern doctrine of the "mandate" threatens to reduce the member of Parliament to a mere delegate of his local political organization.

It will not be claimed by any student of our political institutions that a democratic system results in the highest standard of immediate efficiency. "Publicists rightly warn us that rash expenditure of money extracted from the taxpayer and the ratepayer is the besetting vice and peril of democracy."[3] The tendency to lay ever-increasing burdens on public authorities is likely to develop a bureaucratic system under which the free play of political forces may be stifled. And an appeal to the interests of the moment may prove more effective than an appeal to

[1] I may be allowed to refer to my little book on *Parliament and the People* for more detailed treatment of this subject.

[2] "He (Mr. Gladstone) possessed in an extraordinary degree the power of returning to his audience, elaborated and beautified, their own ideas. . . . It was this gift that made him a great democratic statesman. The immature and formless will of the people constantly found in him an exponent of unequalled power, and received from his genius and earnestness the form and life which was necessary for its realization."—Bright, *Growth of Democracy*, p. 350.

[3] Morley, *Life of Gladstone*, i. 662.

those wider interests on which the permanent well being of national life depends. Against these perils the only effective safeguard must be found in the growth of political insight resulting from the wider diffusion of education. Fundamentally, the problem of democracy is a religious problem, for the constant subordination of personal interests to the general good can only exist in a community that has a religious background.

The national consciousness.

It may perhaps be counted as a hopeful sign that a strong class consciousness has developed in English political life. For the danger of democracy lies exactly in that which in Bentham's view constitutes its justification—that self-interest being man's one supreme instinct, every man will under a democratic system "seek his own" and thus the greatest happiness of the greatest number will be secured! A class interest is better than a merely personal interest. For a man who has learned to care for and think with his class may come to care for and think with the larger whole of the nation. It is the historian to whom we must turn for help in developing this larger national consciousness. National political institutions are one of the forms in which the national consciousness of the past has expressed itself, and in the study of the constitutional development of our own country we learn to understand what are the permanent instincts of the national mind. As we watch the armed warriors gathering in council in their primitive assemblies, or see the knight of the shire setting out reluctantly to obey the king's summons, or mark the justice of the peace courageously shouldering the burden of local administration at the command of his sovereign, or ride with Pym on his electioneering tour in 1640, or trace the process by which the Commons rose to supremacy in the constitutional

system, we learn to recognize that under all these changing conditions the national mind was grappling with the problem of how to reconcile order with liberty—the right of the individual with the authority of the state. And this reconciliation of order and liberty may yet, through the travail of the years that still lie before us, be the noblest contribution that our race is destined to make to the larger humanity of the future.

CHAPTER II

THE FOUNDATIONS OF THE CONSTITUTION

In the first century of the Christian era the frontiers of the Roman Empire in the west lay along the Rhine. The country beyond this river was occupied by a number of tribes akin in their language, institutions, and religion, whom the Romans learned from the Gauls to call *Germans*. Since the name German is now confined to a section only of this race, later ages have extended to the whole group of tribes the name of *Teuton*, which was originally the name of one of the earliest of them with which the Empire came into contact. The Germans.

The Germans were a hardy and warlike race, living, in times of peace, in small communities almost completely independent of each other, but uniting into larger bodies for purposes of war. A life of constant struggle with nature had developed in them a resourcefulness and vigour that enabled them to resist successfully all attempts to incorporate them in the Empire.

Our earliest detailed knowledge of their social and political institutions is derived from Tacitus' *Germania*, written about the year A.D. 98. According to Tacitus the basis of political organization was the *vicus* or township, a small self-governing community under a *princeps* or headman Tacitus' *Germania*.

chosen at the general tribal gatherings. A number of these townships made up a *pagus*, and a group of *pagi* constituted the *civitas* or tribe. Below the armed warrior were men without political rights, in various degrees of servile condition; and above him there appear two kinds of aristocracy existing side by side. There were the *nobiles*, possessed of hereditary dignity and probably the right to larger allotments of land, but with little political power. With these we may class the king, in those tribes in which the institution of kingship existed. Tacitus regards kingship as a new development, but it was probably, in reality, a survival from an earlier patriarchal condition. The king was chosen for noble birth (*ex nobilitate*). His political powers were small, and did not include the right to lead the tribe in war, which fell to *duces* elected for the purpose; nor the supreme right to administer justice, which was vested partly in the priests, and partly in the tribal assembly.

Side by side with this hereditary nobility were the *principes* elected in the tribal assembly. These *principes*, who probably represented a new nobility of office gradually superseding the older nobility of birth, carried on in time of peace the work of local administration, and when the tribe went out to war certain of their number were chosen as *duces* or war-leaders. Each of these *principes* was attended by a body of young warriors or *comites*, in whose personal relation to their chief we can see the germ of the later feudal nobility of service.

The tribal *Folk-moot*.

Tribal assemblies or "Folk-moots" were held at stated times, and were attended by all the armed warriors of the tribe. The *principes* formed a kind of "second chamber" to settle minor questions and prepare business for the tribal assembly. At this assembly questions of peace and war

were discussed, the warriors expressing dissent with loud shouts, and approval by clash of spear and shield. Judicial business and the election of kings and chiefs were also transacted at this tribal gathering.

Tacitus' brief sketch serves to show the fundamentally democratic character of early Teutonic institutions. A tribe of armed warriors, surrounded by hostile neighbours, could hardly hope to maintain its independence and keep its hunting-grounds secure except by the voluntary loyalty of all to leaders chosen for proved valour and deriving their authority from the popular will. So the instinct of discussion played from the first an important part in shaping the policy of the tribe, and justice was administered by the *principes* in conjunction with assessors whose position foreshadows the later system of trial by jury.

Teutonic migrations.

Soon after the time of Tacitus, the growth of population made the struggle for existence more severe in these northern lands, and tribes began to move southwards and press on the frontiers of the Empire. Held back for a time, they ultimately broke through in successive waves of conquest — Goths, Vandals, Burgundians, Swabians, Lombards, and Franks—and founded new kingdoms, in which Teutonic and Roman institutions blended in varying proportions.

Led by the same impulse, the tribes that lived along the northern coast took to the sea, and ravaged the coasts of the Roman Province of Britain. On the withdrawal of the Roman armies from the Province, they came in larger numbers, not to plunder, but to settle. They brought with them their political institutions and ideas, and carried on in their new homes the same kind of life that they had lived in the Low German lands from which they had come. Whatever they may have taken over from the Celtic and

Roman civilizations that they displaced, their political and legal system seems to have remained entirely Teutonic.

Constitutional changes.

But some changes necessarily followed on the conquest. The successful leader of the adventure developed into the king of the tribe, and his chief followers became a separate class of "thegns" or "gesiths," endowed with grants of land, and attached to his person in the same way that the *comites* were attached to the person of the *princeps*. Meanwhile the rank and file of the warriors lost something of their independence. The township generally fell under the control of an overlord, to whom service of various kinds was due. For police purposes, the Anglo-Saxon laws insisted that every man should "commend himself" to some overlord, and the "lordless" man soon came to be regarded as an outlaw. For a time the Folk-moot may have retained its old character as a tribal gathering of the free warriors, but as the little kingdoms gradually lost their independence in the long series of struggles that occupy the seventh and eighth centuries, and became "Shires" of the larger kingdoms of Mercia or Wessex or Northumbria, the Folk-moot became the *Shire-moot*, and the place of the king as local head of the shire was taken by the Ealdorman elected by the central Witan, often from the old royal line.

The Shire-moot.

It was in the Shire-moot that the political life of those early days found its centre. It met twice a year in Anglo-Saxon times, and once a month at a later period, and was attended by all landowners, excepting such as could claim exemption from the duty. The Bishop sat with the Ealdorman, as did also the *Scir-gerefa* or Sheriff, who represented the claims and authority of the king in the local court, and presided over its meetings as his representative. In later times one Ealdorman, or Earl, as he came to be

called, often held more than one shire, and the office tended to become hereditary.

In addition to the landowners of the shire, the Court was attended by the reeve and four men from each township, and twelve representatives from each hundred to present criminals from the hundred court. How and when this system of acting through representatives began we do not know.

The business of the Shire-moot was chiefly judicial. It heard appeals from the smaller local courts, and its verdict, pronounced by twelve senior thegns on behalf of the whole body of suitors, was final, except in special cases where an appeal might be made to the king. The administrative work of the shire was also transacted in the Shire-moot, where also new laws were proclaimed by the sheriff.

The shires were subdivided into hundreds, or, as they were called in Yorkshire and Lincolnshire, Wapontakes. Each of these hundreds has its own Hundred-moot, meeting every month under the presidency of the Hundreds-ealdor for civil and criminal cases, and minor administrative work; and below the Hundred-moot was the *tungemot* or Township-moot, which corresponded to our modern parish meeting. The township remained throughout Anglo-Saxon times the unit for police purposes. The Hundred moot.

Side by side with these courts, there grew up gradually another group of courts, due to grants of jurisdiction given by the king to the great landowners. Grants of Sac and Soc, Tol and Team, and Infangentheof were constantly made to nobles,[1] to whom they were a profitable source of revenue; and the authority of the Hundred-moot was

[1] *Sac and Soc* was apparently a general name for the right to hold courts, *Tol and Team* was the right to hold a market and recover stolen goods by inquest, *Infangentheof* was the right of criminal jurisdiction.

correspondingly weakened, as all who owned suit and service at these seignorial courts were exempt from the obligation of attending the Hundred-moot. These private courts prepared the way for the strictly manorial courts of later times.

The Witan. It was in the local courts of the shire and hundred that the instinct of self-government was kept alive. In the work of the central government the ordinary freeman had neither the power nor the desire to claim a share. Somewhere far away, at Winchester or York or elsewhere, the king gathered his great nobles and ecclesiastics in the *Witenagemot*, or Assembly of the Wise. This body does not appear to have had any fixed constitution. The bishops and ealdormen attended, and besides these, a large number of *ministri* or king's thegns.

That the ordinary freeman had the right to attend is very improbable; certainly the right, if it existed, was one that he never exercised. The powers of the Witan were extensive, though the exercise of them must have depended largely on the will of the king, through whom alone its decisions could become effective. It was by the advice of his Witan that the king made new laws, when required; grants of public lands often received its sanction, and ealdormen, bishops, and even kings were elected by it. In addition to all this, it exercised an appellate jurisdiction, both civil and criminal, in exceptional cases. But, in fact, central government in England remained formless and ineffective till the organizing power of the Norman kings gave a new and definite character to the Great Council.

Anglo-Saxon development. I have described shortly the political institutions that the Anglo-Saxons brought with them when they first came to this country; and I have described the political institutions of the country as they were on the eve of the

Norman Conquest. The process of development that lies between is not easy to trace. It was interrupted by long periods of contest with the Danes, and hindered by the strength of local feeling that survived the break-up of the old kingdoms. The division of the country into shires was not completed till after the Norman Conquest—Lancashire, for example, dates from the twelfth century; and the division into hundreds, though traditionally associated with Alfred, was probably a gradual process. Hundreds vary much in size, becoming larger in the north than in the south.

Influence of the Church.

The conversion of England to Christianity in the seventh century exercised a most important influence on its constitutional development. Long before England was politically one, the whole country was one in its ecclesiastical organization, with a complete system of parishes, dioceses, and national synods. The diocese was at first coterminous with the kingdom, and remained till after the Norman Conquest a very large area. But the bishop was not, as yet, a great secular official. He sat in the local court, where ecclesiastical as well as civil cases were judged, and he attended the Witan, much of whose legislative activity was occupied with Church matters. This close relation of Church and State is a marked feature of Anglo-Saxon times, and carries back the idea of an Established Church to the first beginnings of our national history.

The parish was generally coterminous with the township, which it ultimately superseded as the unit of local government. The priest's relation to the town reeve reproduced in miniature the relation of the bishop to the ealdorman in the larger world.

Coronations.

One of the most important political results of the conversion of England was that the monarchy gained a new sanctity. Though the early English Church knew of

no such doctrine of divine right as that which was taught in Stuart times, yet the ceremony of coronation and unction, by the religious sanction that it gave to the royal office, must have tended to lift the king into a higher position.

In his coronation oath, the king pledged himself to three things: "first, that God's Church and the Christian people of my realm hold true peace; secondly, that I forbid all rapine and injustice to men of all conditions; thirdly, that I promise and enjoin justice and mercy in all judgments."

The king's peace.

As national life grew more settled, the king's office as war-leader tended to give place to his office as the keeper of the peace. Thus any subject guilty of a breach of the peace was liable not only to pay compensation to any one whom he had injured, but also an equal amount to the king as atonement for the wrong done to the public. Hence the king was regarded as the source of justice, and could grant judicial rights to his nobles, reserving, if he chose, certain special classes of cases—the so-called "Pleas of the Crown"—for his own courts.

The growing dignity of the royal office is shown in the development of the idea of treason. The murder of a king, at first punishable only by a larger *wergeld* than that of any other man, now becomes punishable by death and forfeiture. "If any one plot against the king's life, of himself, or by harbouring of exiles, or of his men, let him be liable in his life, and all that he has."

Territorial kingship.

The growth of royal power is closely connected with the most important change that passed over national life in the centuries that followed the Anglo-Saxon migration—the change from a personal to a territorial system of national organization. The change is significantly shown

in the change of title from Athelstan's *King of the English* to Edgar's *Totius Angliae imperator*.

The transition may be expressed by saying that in the early German system the basis of military and political life is the assembly of the free warriors, whereas in the England of the tenth century the basis of political and military life is the assembly of landowners. In the centuries that follow all obligations of service tend gradually to be expressed in terms of land, which "becomes the sacramental tie of all public relationships." England was passing through exactly the same process that in France produced the feudal system, and by the middle of the eleventh century all the materials were ready out of which the Norman statesmen could build a feudal order, while they retained the older local system to counteract its dangers.

CHAPTER III

THE NORMAN CONQUEST

THE Norman Conquest is the most important turning-point in English constitutional history till we reach the Revolution of 1688. Both were important for the same reason—that they brought into definite form constitutional principles that had been growing up gradually in the preceding period.

The Norsemen as organizers.

The Norsemen, originally as destructive in Neustria as their kindred the Danes in England, had developed great constructive powers. They were "a race whose distinguishing characteristic seems to have been a wonderful power of adapting itself to circumstances, of absorbing into its own life the best and strongest institutions of whatever race it conquered." So they became the great architects and the great organizers of Europe. In them the old Viking spirit of vigorous activity was wedded to the Roman spirit of order, and the product of the union was a great passion for efficiency and organization.

William the Conqueror was a typical Norman. He had been trained in a hard school. Called at the age of twelve to rule the turbulent chiefs of Normandy, he had brought order out of chaos, and become the craftiest warrior and the wisest statesman in Europe.

The lack of governance from which the England of the eleventh century was suffering must have seemed to him an appeal for intervention much stronger than the shadowy grounds on which he avowedly based his claims.[1] After the battle of Senlac had given him a foothold in England, he spent four years in beating down local resistance. The whole of his reign after 1070 was spent in reorganizing the realm that he had won. The main object of all this reorganization was not to build up a new system—trial by battle and ecclesiastical courts are the only real innovations that can be attributed to him—but to give definite and efficient form to Anglo-Saxon constitutional institutions. In practice, William was probably more completely despotic than any other king who ever ruled in England, but he chose to clothe his despotism in constitutional forms, and so laid the foundations of English political liberty. William the Conqueror.

William brought over with him no code of Norman law. He accepted the English code that lay ready to hand. "This I will and order, that all shall have and hold the law of King Edward as to lands and all other things, with these additions which I have established for the good of the English people."

But if the institutions of Anglo-Saxon times are to go on, they must be reclothed in a Norman dress. So the shire becomes the *comitatus*, and the sheriff the *vicecomes*. The township is transformed into the *manor*, and the tenants of the local lord become his *villani*.

All this means more than a mere change of names. It means the transformation of vague customs into a definite legal system. The easy-going institutions of Anglo-Saxon England were made to serve the needs of that ruthless

[1] It is interesting to compare the motives of William's intervention in England with the motives of Napoleon's intervention in Spain in 1805.

efficiency that William knew to be the only alternative to the general chaos against which he had fought so stern a fight in his native Normandy.

The "Feudal system."

It used to be said that William the Norman "introduced the feudal system into England." To interpret this phrase we must first understand something about the "feudal system."

When the chaos and confusion of the dark ages began to subside in the tenth century a new social order emerged, based on landownership and military service. The two great needs of every state were the defence and cultivation of its territory, and the welding of its people into a self-conscious community. Feudalism provided for both these needs.

The feudal system started from the king as the supreme landowner, from whom all other landowners held their land, directly (tenants *in capite*)[1] or indirectly (*mesne* tenants) on terms of military service. While they did the required service they could not be dispossessed of their lands. In England the unit of military tenure came to be the *knight's fee*, that is, the amount of land for which its holder must furnish one mounted soldier for forty days each year to the king. At the lower end of the social scale were the manorial tenants (socage tenants and *villani*), who held their land on terms not of military but of economic service. It was their task to cultivate the land of the nation while their overlord defended its frontiers.

The feudal system had this special advantage, that, in the days when land was practically the only source of wealth, it gave every man a real status in the national order. The only

[1] Dr. Gneist reckons the tenants-in-chief of the crown at the time of Domesday at six hundred, and the subtenants at about eight thousand, of whom half were English.

man left out was the man without land or lord, and while there was land enough for all no man need be in this class. As soon as the growth of towns produced a new class of landless men, the system began to be modified. In France an attempt was made to establish the towns, as "communes," within the feudal order, the commune being regarded as capable of acting as a collective overlord or vassal; but in England the towns were never incorporated into the feudal scheme.

The towns.

The Church was provided for in a different way. A large amount of Church land was held on the ordinary military tenure, but ecclesiastical property could also be held by *frank-almoign*, or "free alms," that is, tenure by prayer, the only obligation being to pray for the soul of the donor. It was the extension of this *frank-almoign* tenure that led to the Statute of Mortmain in 1279, by which donations of land to the Church were prohibited.

The Church.

Beginning thus as a system of land tenure, feudalism gradually shaped the forms of political life. The relation of the overlord to his vassals involved certain claims of a financial character. For example, on succession a vassal paid a *relief* to his overlord, who had also the right to demand an *aid* (*auxilium*) under certain circumstances. The overlord had also the right of *wardship*, that is, of administering the estate during the minority of the vassal; and of *marriage*, that is, of providing a husband for a female inheritor—a right that took the form of a demand for payment on the marriage of a ward. And lastly, on failure of heirs, or refusal of a vassal to fulfil his obligations, the land *escheated* to the overlord. These rights constituted one of the most important sources of royal revenue, and accordingly Feudalism became a financial as well as a military arrangement.

Feudal dues.

As a system of government Feudalism proved a failure. For the great tenants-in-chief were the only subjects over whom the king exercised direct authority, and as the vassals of these great tenants were bound by their oath to follow their overlord, even against the king, the sovereign was liable to become little more than a figure-head, or at best an arbiter among contending barons. He could only secure any real power by playing off his great vassals against each other. This was the condition of the kingdom of France at the time of the Norman Conquest, and England under Edward the Confessor was drifting into a similar condition.

Feudalism in England. William had seen all this, and while he gave a definite direction to the feudal tendencies that he found in England, he took steps to counteract the worst dangers of Feudalism.

The land system of England was completely feudalized. The fact that William had acquired England as a conqueror made it easier to treat the land as *terra regis*, and such of the English tenants as were not dispossessed were obliged, in the words of the Anglo-Saxon Chronicle, to "buy their lands," that is, to pay a fine in recognition of the royal overlordship. But William was determined that there should not be in England great fiefs like those that reduced the authority of the king in France to a shadow. It is a significant sign of this determination that the Earl now ceased to sit with the sheriff in the Shire-Court. Except for the "third penny" which he still received, the relation of the Earl to his county was only titular. Earls there might be of Hereford or Norfolk, who might not seldom disturb the royal peace, but they could not march against the king at the head of the united forces of the counties from which they derived their titles.

In local administration, the sheriff became supreme,

but the Shire Court gradually lost influence through the grant of exemption from attendance to the greater landowners. The Hundred Court continued to suffer through the increase of local manorial courts, whose suitors were exempt from the obligation of attendance at the Hundred-Court. Yet the fact that the old local courts survived, tended to preserve the continuity of English constitutional development, and to impose a valuable check on the disintegrating tendencies of Feudalism.

The Great Council

Central government went on, apparently as before. "Thrice the king wore his crown every year he was in England; at Easter he wore it at Winchester, at Pentecost at Westminster, and at Christmas at Gloucester; and at these times all the men of England were with him—archbishops, bishops and abbots, earls, thegns and knights."

But the Great Council that gathered around the king was very different from the Witan with which the Anglo-Saxon kings had had "deep speech" in former days. It was now the right and the duty of all tenants-in-chief of the crown to attend the *Curia* or court of their overlord, and it was an advantage to the king to have the great feudal vassals under observation. But the smaller landowners who held direct from the crown would not be expected to come, and hence there grew up a distinction, destined to have important consequences, between the greater and lesser *Barones*, or free tenants of the king. The Greater Barons were the Barons who came, and by coming established the principle that however autocratic an English king might be, he was bound to act with the "counsel and consent" of his Council.

The Salisbury meeting, 1086.

But William was not content that his relation with his subjects should rest only on a feudal basis. Perhaps the

most important single event in his reign was the great gathering at Salisbury in 1086, when "there came to him all the landowning men of property there were over all England, whose soever men they were, and all bowed down to him and became his men, and swore oaths of fealty to him that they would be faithful to him against all other men." In thus bringing all the landowners of England into direct relation with himself, William set up a new national ideal side by side with the feudal ideal.

Whose soever man he was, every English landowner was to be taught to recognize that his first duty was to the crown. The victory of the king's successors in the long struggle that they were obliged to wage against the claims of the great vassals was largely due to this recognition of the crown as the centre of national unity as against the disintegrating influence of Feudalism.

It belongs to the same idea that in English feudal law no man is bound to fight *for* his lord, only to fight *with* his lord for the king. So private war never becomes legal in England, as it did in France.

The central executive.

But we have still to deal with the most important change that followed on the Norman Conquest. The most striking feature of the later Anglo-Saxon times is the weakness of the central executive. An Alfred or an Edgar might for a time exercise real authority, but central government decayed as soon as the reins of power passed into weaker hands. The royal revenue was collected in a haphazard way, the national military system broke down over and over again in times of need, royal justice was casual and intermittent. Anglo-Saxon statesmen were generally content to "muddle through."

William was as completely his own chief minister as Alfred or Edgar, but he began to develop an executive

body that should carry on efficiently the actual work of administration. Royal revenue was collected with new vigour, to the great distress of his subjects, who saw in the Domesday survey—probably rightly—a new instrument of royal exactions. A permanent body of officials begins to appear, at the head of whom is the Justiciar, an officer who held a position in Norman England not unlike that of the Imperial Chancellor in modern Germany. The organization of this executive body was the work of Henry I., but the beginning of it dates from the reign of his father.

The Anglo-Saxon period had seen the establishment of an efficient system of local government in England; the Norman kings established an efficient system of central government, and so, for the first time, gave England the consciousness of national unity; the Angevin kings linked the local and central systems by sending itinerant justices from the central court to the local courts; and Simon de Montfort and Edward I. completed the work by calling up representatives from the local courts to the central Council.

Church courts.

One other change of importance in national institutions followed on the Norman Conquest. The close relations between the Church and the State, which had been a marked characteristic of Anglo-Saxon times, now ceased. Hildebrand was at this time the leader of a great effort to disentangle the Church from the world, and as part of the price that he paid for the support given by the Pope to his invasion of England, William issued an Ordinance separating the ecclesiastical and secular courts. The bishop no longer sat in the Shire-Court, and ecclesiastical offences were no longer tried there. Two judicial systems were set up side by side; it was almost inevitable that sooner or later they should come into collision. The collision

came, as we shall see, in less than a hundred years, and brought with it the murder of an archbishop and the shattering of an Empire.

But though the Bishops no longer shared in the local administration, they still came, with the mitred abbots, to the Great Council, and their presence there prevented the Council from becoming a body composed exclusively of hereditary feudal barons. They still remain, except for the Law Lords, the only non-hereditary element in the Upper House.

William's work.

The actual powers of the Great Council, under the masterful rule of the Norman kings, were probably slight, but it was by the "counsel and consent" of the Council that new laws were promulgated. The phrase may have been little more than a form, but it was a form that imposed a barrier to all efforts of the lawyers in later times to maintain in England the Roman legal doctrine that the king's will has the force of law (*Quod princeps placuit, legis habet rigorem*).

Twice in our history—in the reign of William I. and in the reign of Henry VIII.—England was for a time ruled by a practically autocratic king, but in both reigns the forms of the Constitution were preserved, and so the reassertion of constitutional liberty took the form, not of a revolution, but of a revival that clothed the old forms with a new life—a movement at once conservative and progressive.

"It has been remarked a thousand times that, while other nations have been driven to destroy and to rebuild the political fabric, in England we have never had to destroy and to rebuild, but have found it enough to repair, to enlarge, and to improve. This characteristic of English history is mainly owing to the events of the eleventh

century, and owing above all to the personal agency of William. As far as mortal man can guide the course of things when he is gone, the course of our national history since William's day has been the result of William's character and William's acts."[1]

[1] Freeman, *William the Conqueror*, p. 199.

CHAPTER IV

THE DEVELOPMENT OF THE JUDICATURE

THE history of the Constitution from 1066 to near the end of the twelfth century is the history of a steady process of development with two periods of interruption. The first of these was the reign of William Rufus, which served to show how a despotic monarch could turn feudal customs into instruments of extortion; the second was the reign of Stephen, which served to show how a weak king and a disputed succession could open the flood-gates of feudal anarchy. The outcome of the reign of William Rufus can be seen in the Charter of Henry I. wherein the new king pledged himself to observe the ancient customs; the outcome of the reign of Stephen can be seen in the efforts of Henry II. to establish royal justice on a firm foundation, so that the King's Court may be strong enough to maintain order.

The Charter of Henry I.

Henry I. inherited the statesmanlike qualities of his father, as his brother the Red King inherited his military genius. Robert of Normandy apparently inherited neither. Yet Robert did one important service to English constitutional progress, for his claims to the throne of England were supported by a number of the Anglo-Norman barons, who wished to see the same king ruling in England and

Normandy; and Henry was accordingly thrown back on the support of his English subjects. It was this struggle that led him to inaugurate his reign by issuing the Charter that afterwards played so important a part in the crisis that resulted in the Great Charter. The grievances that Henry promises to redress are very similar to those of the reign of King John, but the significant difference between the two documents is that Henry only makes a general promise to restore the "ancient customs," whereas King John is forced to give to these ancient customs clear legal definition.

Forest laws.

On one point Henry refuses all concession. "The forests by the counsel and consent of my barons I retain in my own hands as my father had them." It may be well to say a few words about this question of forest law. The extension of forests did not necessarily mean the entire depopulation of the areas so taken over by the king, but it did mean that all the inhabitants of the district came under a special code of forest laws, and lost the protection of the ordinary law of the land. The grievance of the Norman afforestations was akin to the grievance of the Stuart Star Chamber both superseded the ordinary law-courts in the interest royal despotism.

Taught by the experience of the beginning of his reign, Henry set himself to strengthen the whole machinery of government, especially on its judicial side.

The Exchequer.

One of the most important tasks of the reign was the organization of the Exchequer. Some kind of machinery for dealing with royal revenue must have existed in Anglo-Saxon times, and William I. appears to have given it a more definite character by the appointment of a Lord High Treasurer. But it was Bishop Roger of Salisbury, in the reign of Henry I., who brought the Exchequer to

full efficiency. Under the Justiciar, a number of *barones scaccarii* supervised the assessment and collection of the revenue, which was paid in half-yearly by the sheriffs, a chequered cloth being used for balancing the accounts. The chief sources of royal revenue for the collection of which the sheriff was responsible were the old Danegeld (which continued to be levied to the time of Henry II., and was then superseded by a land tax called *Carucage*); the fines levied in the local courts; the feudal dues; the royal rents; and the so-called "ferm" of the shire, which was apparently a payment made to the king, in lieu of his claims for support, by the towns in his royal demesne—a payment which the towns generally succeeded in securing the right to compound with the sheriff. We have valuable information as to the working of the financial business of the State in the Pipe Rolls, which were kept by the Chancellor and Treasurer as records of the business done; and also in a very interesting document, the *Dialogus de Scaccario*, which was probably written by Bishop Richard of London, great-nephew of Roger of Salisbury.

But the collection of the revenue necessarily raised questions properly judicial. A might decline to pay the dues on his land while B's claim on it remained unsettled. C might declare his assessment excessive. So the *barones scaccarii* soon found themselves acting as a judicial body.

Itinerant justices.

An important development followed. The Barons of the Exchequer began to visit the local centres for the purpose of supervising the assessment of the taxes and settling disputes. So began the system of itinerant justices, the first link of connexion between the old local courts and the Norman central administrative system. It was not till the reign of Henry II. that these tours of the

judges became systematic, but the beginning of them dates from the reign of his grandfather.

To some extent these itinerant justices may be regarded as doing for the king what in earlier days the king had done himself. In Anglo-Saxon times the king was constantly on the move, and as he passed from shire to shire his subjects could bring their demands for redress to him in person. The Norman court was more fixed, though by no means as much so as in later times, and the king was therefore less accessible to his subjects. So the itinerant justice met a real need.

The local courts. It was part of the policy of the king to strengthen the ordinary local courts, which the sheriffs, often powerful local magnates, were no doubt tempted to use chiefly as a means of increasing their own influence. "I grant and order that now my County and Hundred Courts shall sit at the same places and times as they sat in the time of King Edward, and not otherwise. I will also cause those courts to be summoned when I choose, as my necessities may require."

The Curia Regis. But the local courts were not strong enough to deal with powerful offenders, nor would it have been seemly for the great tenants-in-chief of the crown to bring their disputes before a general gathering of their neighbours. So Henry I. developed the inner circle of advisers, that his father had formed, into a *Curia Regis* or royal court of justice. A great variety of cases came before this central court—"pleas of the crown," that is, cases in which the king was personally interested; appeals from the local courts for royal intervention; disputes between tenants-in-chief of the crown, and some amount of criminal business. At first the *Curia Regis* was both a judicial and an administrative body. It consisted of the great officers of state

and other members appointed by the king. Of these great officers of state the most influential was at this time the Justiciar, whose office had greatly increased in importance since it had been held by the infamous Ranulf Flambard in the reign of William Rufus. It remained the highest office in the royal service till the time of Henry III., when Hubert de Burgh, the last of the great Justiciars, was dismissed in 1232, and finally, in the reign of Edward I., the Justiciar becomes the Lord Chief Justice and loses his administrative functions.

The Chancellor.

Meanwhile the Chancellor, originally the king's chaplain and secretary, gradually grew more important. He was the keeper of the Great Seal, and the adviser of the crown on questions of conscience. Hence the office was always held in early times by an ecclesiastic. To him the king was wont to refer petitions for "grace and favour," that is, for redress of special hardships involved in the ordinary law. This part of the work of the Chancellor led to the development, in the following century, of the equitable jurisdiction of the Court of Chancery.[1]

Church and State.

Before we pass from Henry I., a word must be said about Anselm. The close co-operation of Church and State that subsisted while William I. and Lanfranc lived was broken through the quarrels that arose between Anselm and William Rufus. To Anselm we owe the tradition that it may become the duty of an archbishop to withstand his sovereign when the rights of the Church are in danger, and though the relations between Henry I. and the archbishop remained personally friendly, Anselm showed himself as stark in resisting Henry's claims to the right of investiture as he had been in withstanding the mere greed of William II. 'The tradition of resistance was

[1] See Maine, *Ancient Law*, ch. iii.

passed on to Thomas of London, the ill-fated antagonist of Henry II.; to Hugh of Lincoln, who withstood the demands of Richard I.; to Stephen Langton, the great organizer of resistance to the infamous John; and to Edmund Rich, the unfortunate champion of good government under Henry III. After the accession of Edward I. the Church was brought into a new position of subservience to the crown, and the archbishop becomes more definitely the servant of the king.

After the short but lurid interval of the reign of Stephen, Henry of Anjou took up the work of constitutional development that the Norman kings had begun. Next to William the Conqueror, no English king has left the impress of his personality so ineffaceably on our national institutions. "He was a foreign king who never spoke the English tongue, who lived and moved for the most part in a foreign camp, surrounded with a motley host of Brabançons and hirelings; and who in intervals snatched from foreign wars hurried for a few months to his island kingdom to carry out a policy which took little heed of the great moral forces that were at work among the people. It was under the rule of a foreigner such as this, however, that the races of conquerors and conquered in England first learnt to feel that they were one. It was by his power that England, Scotland, and Ireland were brought to some vague acknowledgment of a common suzerain lord, and the foundations laid of the United Kingdom of Great Britain and Ireland. It was he who abolished feudalism as a system of government, and left it little more than a system of land-tenure. It was he who defined the relations established between Church and State, and decreed that in England churchman as well as baron was to be held under the Common Law. It was he who

Henry of Anjou, 1154-1189.

preserved the traditions of self-government which had been handed down in borough and shire-moot from the earliest times of English history. His reforms established the judicial system whose main outlines have been preserved to our own day. It was through his 'Constitutions' and 'Assizes' that it came to pass that over all the world the English-speaking races are governed by English and not by Roman law. It was by his genius for government that the servants of the royal household became transformed into ministers of state. . . . The more clearly we understand his work, the more enduring does his influence display itself even upon the political conflicts and political action of our own days."[1]

Periods of the reign.

From the point of view of constitutional history the reign of Henry II. falls into three clearly marked periods. In the first of these Henry was occupied in repairing the havoc wrought in national life by the chaos of the preceding reign; in the second he was carrying through his great contest with the Church; while in the third he was giving system and permanence to the judicial arrangements that he had inherited from his grandfather.

It would be difficult to exaggerate the confusion into which all departments of administration had fallen at the time when Henry ascended the throne. For Stephen had not only let loose the forces of feudal anarchy to the utter ruin of the local administration; he had also quarrelled with the chief officers in whose hands lay the whole of the central administration, and by imprisoning Roger of Salisbury, the Justiciar, and his son and nephew, who held the offices of Chancellor and Treasurer, had alienated the Church from his cause.

The rapidity with which the new king brought back the

[1] Mrs. Green, *Henry II.* pp. 1-2.

turbulent barons to subjection showed that a master hand now held the reins of kingship. The mercenary troops vanished like phantoms, the "adulterine" castles were surrendered or stormed, and within little more than a year of his accession Henry was undisputed master of the whole realm, none daring to withstand his will. In the longer task of rebuilding the administrative system Henry found valuable helpers in some of the veterans who had survived from the days of his grandfather. Such were Nigel, Bishop of Ely, who resumed the office of Treasurer, and the great Richard de Lucy, who shared the office of Justiciar with the Earl of Leicester. To these he added as Chancellor a younger man, Thomas, afterwards known as Becket, who passed to the service of the crown from that of the Archbishop of Canterbury. With the help of these ministers Henry restored the administrative system that his grandfather had inaugurated. The Great Council, after fifteen years' intermission, met again at Christmas 1154. The Exchequer resumed its work, which was greatly facilitated by the issue of a new coinage. Sheriffs were appointed for the counties where the office had remained vacant in some cases for years.

Administrative restoration.

Two important measures belong to the early years of the reign. The first of these—the institution of the Great Assize—will be more conveniently dealt with when we come to consider the rise of the jury system. The other was the introduction, in connexion with the Toulouse Campaign of 1159, of the custom of *scutage* (or shield-money)—a tax paid in lieu of personal services, to enable the king to hire mercenaries for his wars. This scutage, which Henry, in spite of the protests of the Church, levied from Church lands as well as from his lay-tenants, was a great blow to feudalism as a military system.

Scutage, 1159.

Church courts.

In 1164 the work of constitutional development was interrupted by the outbreak of a bitter contest between the king and his Chancellor, Thomas, who had now become Archbishop of Canterbury. We have already seen how William separated the ecclesiastical from the lay courts. The inevitable result of that separation was that two systems of law grew up, the Church courts developing a legal system of their own based largely on Roman law, which was being studied abroad at this time. The breakdown of the secular machinery of government under Stephen threw more business into the hands of the Church courts, which at the beginning of the reign of Henry II. are said to have received a revenue in fines larger than the revenue of the crown.

The Constitutions of Clarendon, 1164.

As soon as Henry II. began to carry forward the organization of a national system of law and justice, he was confronted by the obstacle of clerical immunity from the ordinary courts. So at the Council of Clarendon he demanded of the archbishop and his fellow-bishops that he would undertake to keep "the customs of the kingdom." They assented, "saving their order," and the question then arose, What were the customs of the kingdom in matters ecclesiastical? A committee was forthwith constituted to draw up a written statement on the subject, and the result was the famous Constitutions of Clarendon. It is impossible to enter in detail into the contest that followed. The vital point at issue was the claim of the royal courts to supremacy over the ecclesiastical courts. The claim of the Church to be an *imperium in imperio* in matters judicial met with the same strenuous resistance from Henry as the similar claim in matters political met with from Edward I. more than a century later. And though in the end the murder of Thomas of Canterbury threw the glamour of martyrdom

over the cause that he had championed, yet substantially Henry got his way, though his victory plunged him into difficulties from which he never succeeded in extricating himself.

While this contest was still in progress, the king started a fresh series of constitutional changes. In 1166 he issued the Assize of Clarendon,[1] a code of regulations drawn up for the guidance of the judges who were about to go on circuit. It is not too much to say that this "Assize" placed the whole administration of justice on a new footing. The first articles deal with the presentation of criminals in the local courts. Presentments were to be made by a jury of twelve men of the hundred, and the criminal so presented was to be tried by the "ordeal of water," and (by a later regulation), if he escaped this, was to be banished as a man of evil reputation. All freemen were to attend the local courts on the occasion of a judge's visit. The judges were to enter all baronial "liberties" for "view of frankpledge," that is, to see that all men were enrolled in groups of ten for mutual responsibility. Sheriffs were to co-operate with each other in hunting down criminals. Any man entertaining a stranger was to be answerable for him to the judges. These regulations are significant because they show that Henry intended to make the itinerant justices a permanent and efficient instrument for enforcing alike on great vassal and simple freeman the responsibility of sharing in the duty of maintaining good government.

Assize of Clarendon. 1166.

One result of this new system was to replenish the royal coffers with large sums collected in fines in the local courts; another was to bring into greater prominence the minor

[1] "An 'assize' seems to mean in the first instance a sitting, a session, for example, of the king and his barons; then the name is transferred to an ordinance made at such a session; then again it is transferred to any institution which is created by such an ordinance." (Maitland.)

landowners of the county—the "knights of the shire"—on whom fell the largest share in the actual work of local justice.

The Assize of Clarendon gave a new efficiency to the whole legal system, but it left the old law of England intact. It helped forward the process by which Common Law became supreme in all departments of English life. It was "judge-made" law that was administered in the Shire-Court and in the *Curia Regis*, and hence England never passed, like the rest of Europe, under the control of Roman law.

Assize of Northampton, 1176.

Ten years later the legal system was further developed by the Assize of Northampton, which divided the country into six circuits and extended the powers of the itinerant justices, as they now, for the first time, began to be called.

The Kings Bench, 1178.

Two years later the king started on a tour through England, which resulted in his last important judicial reform. "The king enquired about the judges whom he had appointed in England, if they treated the men of the kingdom well and courteously; and when he learned that the land and his subjects were too much burdened with the great number of justices, by the advice of the wise men of his kingdom he elected five—two clerics and three laymen—all of his own household; and he ordered that they should hear all appeals of the kingdom and should do justice, and that they should not depart from the King's Court, but should remain there to hear appeals; so that if any question should come to them which they could not settle they should present it to the audience of the king, and that it should be decided by him and by the wise men of the kingdom." With the establishment of this Court of King's Bench, the judicial work of Henry closes. The new court gradually took over the judicial business of the old *Curia Regis*, and even inherited its name.

The Court of Exchequer was already in existence, and a little later a Court of Common Pleas was created for hearing cases between subjects in which the king's interests were not involved. These three courts lasted on till the rearrangement of the High Court of Justice in 1875. Meanwhile the Great Council still remained the final Court of Appeal—from this sprang, as we shall see, the judicial rights of the House of Lords and of the Privy Council.

Inquest of sheriffs, 1170.

A few years before this, the king had finally broken the independent power of the sheriffs. Landing in England in 1170 after four years' absence, he was met with many complaints against the sheriffs. He removed most of them from their office, and issued instructions to some of his barons to hold an "Inquest of Sheriffs." In the place of the deposed sheriffs he appointed officers from the Exchequer, over whom he could exercise complete control.

Assize of Arms, 1181.

Two other "Assizes" of this period deserve a passing mention. The Assize of Arms (1181) was an attempt to regulate the national military forces, as distinct from the feudal force. The old obligation resting on all freemen to share in the national defence was not merged in the feudal idea, and more than once the Norman kings had fallen back on this national force for subduing turbulent nobles. This local levy, the germ of the future militia, was under the command of the sheriff till the appointment of the Lord-Lieutenants in Tudor times. By the Assize of Arms the supervision of this force was entrusted to the itinerant justices. The Assize of Woodstock, three years later, was an attempt to codify the forest laws.

I have left to the last the most important contribution made by Henry II. to our judicial system. Though the roots of the jury system go back to the Norman times, it

was Henry II. who finally established the system as a normal part of the machinery of justice.

Jury system.

In Anglo-Saxon times a man might vindicate his innocence in two ways—by oath or by ordeal. The method of trial by oath was called *compurgation*, because the accused person had generally to produce a certain number of friends who would swear to his credibility. The number of compurgators demanded varied according to the gravity of the offence, and there was a kind of tariff of value—the oath of a thegn being worth six ordinary freemen, and so on. In graver criminal cases, where the guilt of the accused was nearly certain, he was sent to the ordeal.

Norman inquests.

Besides the system of trial by battle the Normans brought with them to England a method of ascertaining the truth that appears to have been Frankish in origin. A body of men are selected who can testify on oath from personal knowledge the truth of the matter about which information is required. Thus the Domesday survey was carried out by holding "inquisitions" in every township, at which the priest, reeve, and six villagers gave testimony on oath with regard to the tenure and value of the lands in their district. Henry II. began to use this machinery for judicial purposes in the Great Assize, by which, in case of a dispute as to the ownership of land, either claimant, as an alternative to trial by battle, might demand that the question should be settled by a body of twelve knights, chosen by four knights selected by the litigants. These twelve knights are to appear before the itinerant justice and swear, from their personal knowledge of the facts, which of the claimants has the best right to the land. A similar method was adopted in the case of what is called a "disseisin," that is, an ejection of a man from property of

The Great Assize.

which he is in possession; but in this case the body of twelve is selected by the sheriff. From this beginning the method of settling civil actions by inquests of sworn men gradually grew. In criminal cases Henry's Assizes provide for a body of "twelve lawful men" to present offenders before the justices. It is a matter of some controversy whether these are a survival from the old Anglo-Saxon system, or whether Henry was unconsciously copying an older custom. This jury of presentment is, of course, our present Grand Jury. Meanwhile the system of trial by ordeal went on till it was abolished by the Lateran Council in 1215. When this happened, a second "petty" jury was created to try the case sent for trial by the Grand Jury. But a curious idea persisted that a man ought not to be tried by a jury without his own consent. He must first "put himself upon his country". If he refused to do this, he might remain in prison indefinitely. To avoid this difficulty, recourse was had to what was called the *peine fort et dure*, a method of torture by which a man was slowly crushed to death by heavy weights. Sometimes the accused held out to the end and died, for, if he died thus uncondemned, his family was not left penniless by the confiscation of his goods, as was the case in grave criminal convictions.

Grand and Petty Jury.

But it will be noticed that the jury of the thirteenth century differs in one very important respect from the modern jury. They were chosen as men who were acquainted with the facts, and could testify from personal knowledge; in fact, they were both witnesses and jurors. About the time of Edward I. it was found that in some cases the jurors selected did not know the facts, and they were then "afforced," as it was called, by men who did. A little later the two bodies were separated, and by the time

of Henry IV. cases were heard and witnesses examined in open court as they are now. Finally, in the Tudor period it became a rule that the jury shall consist of men who do not possess any previous knowledge of the case.

Trial by jury, thus introduced, has become one of the most characteristic features of our English judicial system, and has undoubtedly proved, at times, an important safeguard of individual liberty. It is also important as a step in the process by which the idea of acting through representatives grew up. Parliament might almost be said to have begun as a kind of national jury of assessment.

Ranulph de Glanvil. Before we leave the reign of Henry II. a word must be said about the chief minister of his last years, Ranulph de Glanvil, who was Sheriff of Yorkshire in 1175, and became Justiciar five years later. His most important work was the compilation of a great treatise about the laws and customs of the Kingdom of England (*Tractatus de legibus et consuetudinibus Regni Angliae*) in fourteen books. Though the treatise deals chiefly with legal procedure rather than with the actual laws themselves, it is of great value to all students of English law.

CHAPTER V

THE GREAT CHARTER

To the historian of the Constitution the ten years of the reign of Richard I. appear at first sight almost a blank. While the king was pursuing his career of adventure abroad, England was administered by men trained in the previous reign; and there was therefore no break in the continuity of the administrative system. The first of the Justiciars of the reign, William Longchamps, was driven from office by the barons, with Prince John at their head. The Archbishop of Rouen, who succeeded, had it as his chief task to raise the enormous sum required for the ransom of the king. On his resignation Hubert Walter became chief minister, and retained office till within a year of the death of the king, when he gave place to Geoffrey Fitz-Peter. Richard I., 1189-1199.

The most important constitutional document of the reign is the "Iter" of 1194, a body of instructions to the itinerant justices, similar to the Assizes of Henry II. In this "Iter" a definite system is laid down for the election of the Grand Jury, and provision is also made for the election of three knights and one cleric to hold pleas of the crown in place of the sheriff. The importance of these clauses lies in the extension that they give to the principles of election and representation in the local courts. "Iter" of 1194.

The reign is marked by one other important constitutional feature—the development of municipal self-government. The financial requirements of the king provided an opportunity for the burgesses of the towns to buy charters giving them large powers. It will be more convenient to treat the whole subject of the development of the boroughs in a separate chapter.

John, 1199-1217. With the accession of John we leave behind the first great constructive period of English constitutional history, and come within sight of a struggle that lasted through the greater part of the thirteenth century. It is important at the outset to understand the real nature of this struggle. The idea that the Great Charter was a summary of "the immemorial rights of Englishmen," wrested from the king by the united efforts of the people, can no longer be accepted. As a matter of fact the Charter was no more than an incident, though a most important incident, in a contest between the feudal barons and the king. The administrative work of the Norman and early Angevin kings had established the sovereign in England in so strong a position that the safeguards against autocracy that the feudal system provided were in danger of proving futile. In France the kings were obliged to wage a long contest against the overweening power of the great vassals. In England a simultaneous struggle was going on of the opposite kind—the great vassals seeking to curb the overweening power of the monarchy entrenched in a centralized and largely bureaucratic administrative system. In this contest the interests of the Church were with the baronial side, and accordingly Stephen Langton made common cause with the barons, as Bishop Grosseteste afterwards supported Simon de Montfort.

But it is by no means clear that the interests of the

mass of the people were served by the attempt to tie down the king to the "ancient customs" of a feudal monarchy. That the Great Charter inaugurated a period of growth of popular liberty was due, not to any article of the Charter, but rather to the fact that in the contest the king and the barons found themselves so equally matched that each tried to enlist the help of the "commons of the realm." In the end it was the crown that was able to secure this, and hence the line of development of constitutional liberty was not the restriction of royal power so much as the definition of the channel of its exercise.

This does not mean that the Great Charter is unimportant. It is of the greatest value as a summary of the constitutional position at the beginning of the thirteenth century.

It would be impossible to tell in detail the story of the events that led to the rising of the barons in 1215. The strange thing is not that it came but that it did not come years before. Disunion among the baronial leaders, and the ability with which the king fostered it, help to account for the delay. But when the king had won, by an ignominious surrender, the support of the pope, and had started on a foreign war that was intended as a preliminary to the final establishment of a despotism in England, action became necessary. By producing, at this critical moment, the Charter of Henry I., Stephen Langton, the archbishop, supplied a definite programme to the malcontents; and the Great Charter might not incorrectly be described as a demand for the "laws of King Henry I.," with the additions made thereto by Henry II. Like all our great constitutional documents, it professes to assert no new claim, but to guarantee the observance of the existing law. Baronial rising of 1215.

The Charter is divided into sixty-three clauses, of which

The Great Charter.

fourteen have to do with the execution of its provisions. The rest may be divided into five groups, which we will consider in turn.

First there are two clauses about the Church. The first promises that "the Church of England shall be free, and have its rights intact, and its liberties uninfringed." The other regulates the assessment of lay holdings of clerics, and is not very important.

The second group consists of twenty-four clauses dealing with feudal abuses. Into these there is no need to enter in detail. They constitute a code of rules regulating the rights of the king as feudal overlord, and, incidentally, regulating also the relations of the great tenants to their vassals.

Judicial clauses.

The third group consists of ten clauses dealing with judicial matters, and these are more permanently important. Clause 16 states that "Common Pleas shall not follow our court, but shall be held in a fixed place." This is practically the beginning of a Court of Common Pleas sitting at Westminster. Clauses 18 and 19 regulate the "Assizes" of the itinerant justices, which are to be held four times a year. Clause 20 declares that fines must be proportional to the gravity of the offence. Clause 24 prohibits sheriffs from holding pleas of the crown. Clauses 36 and 38 deal with minor judicial matters, but clauses 39 and 40 are perhaps the most important of the Charter. Clause 39 runs: "No free man shall be taken, or imprisoned, or deprived (of his property), or outlawed, or exiled, or in any way attacked; nor will we go against him (*super eum*) nor send against him, unless by lawful judgment of his peers, or by the law of the land." And clause 40 runs: "To none will we sell, to none will we deny or delay, right and justice."

There are some points of uncertainty of the interpretation

of the first of these clauses, but the general meaning of both is clear. They constitute a formal abandonment by the king of all claim to supersede the ordinary process of law by arbitrary exercise of royal power. They are a clear assertion—perhaps the first clear assertion in our history—of what Professor Dicey calls the "rule of law" in English life. In securing this recognition for themselves, the baronial party incidentally secured it for all the freemen of the kingdom. The king's courts are to be open freely to all, and the royal executive is to enforce, not to supersede, the ordinary law and the verdicts of the local courts. The other two clauses dealing with judicial matters—Nos. 45 and 54—are not of any special importance.

Eleven clauses are occupied with abuses of forest law. These were, in subsequent issues of the Charter, taken out and made into a separate Charter of the Forests; hence it is the Charters that are confirmed from time to time.

Forest clauses.

Lastly, there is a miscellaneous group, dealing with the rights of the Londoners, the protection of merchants, the extension to the subtenants of the barons of the principles of the Charter—"All these aforesaid customs and liberties which we have conceded to be observed in our kingdom, in our relations with our men, all those of our kingdom, both cleric and laymen, shall observe in their relations with their men." In this group are two important clauses. Clause 12 lays down that "no scutage or aid (except the three regular feudal aids) shall be imposed except by common counsel of the realm." Clause 14 describes how this "common counsel" is to be supplied. The clause must be quoted in full, as it bears very closely, as we shall see, on the development of Parliament. "For holding a common counsel of our realm, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons,

Miscellaneous clauses.

Constitutional clause.

individually and by our letters; and we shall also cause to be summoned generally, by our sheriffs and bailiffs, all who hold of us in chief; for a certain day, which shall be at least forty days ahead; and to a certain place; and in all these letters of summons we shall declare the cause of the summons; and on the appointed day the business shall be settled according to the counsel of those who shall be present, although all who have been summoned may not have come."

The only comment I shall make on this clause at present is that it is a complete anachronism to see in it an assertion of the principle of taxation by consent which hardly begins to be recognized till the end of the thirteenth century. The most that can be said is that it interposed a barrier to attempts of the king to levy scutages or aids by the mere exercise of his personal authority. The Great Council had always claimed the right to be consulted on these matters; they merely renewed the claim, and provided a definite method of summons, which was probably on the lines of existing custom. In the reissue of the Charter in 1216 these two clauses were omitted, probably because the council of regency wanted more time to consider the whole question of taxation. Further alterations were made when the Charter was reissued in 1217 and 1225, after which the document takes its final form.

Security for the Charter.

The security for the observance of the Charter was twofold—the oath of the king (from which the pope promptly absolved him), and the appointment of a committee of twenty-five barons, who were authorized to make war upon him if he failed to keep his promises. This device of a baronial committee to restrain royal misgovernment reappears, as we shall see, in the Provisions of Oxford. It seemed the only effective way to assert the claim that the

sovereign was bound to rule by the advice of his great nobles. But it generally proved an ineffective safeguard, as it was easy for the king to sow dissension among them.

The twenty-five, whose duty it was to watch over the observance of the Charter found their work beginning almost as soon as the ink of the royal signature was dry. War broke out at once, Lewis of France was invited over by the barons, and it was only John's death that saved England from the danger of becoming a province of the French kingdom. As soon as Henry III. succeeded, at the age of nine, Lewis' chance of establishing himself in England ended, and under the patriotic rule of William Marshall and Hubert de Burgh, England enjoyed sixteen years of good government. But in 1232 Henry dismissed Hubert and became his own chief minister, with the alien Peter des Roches as his leading adviser. Over twenty years of extortion and misgovernment on the king's part, and of futile protests on the part of the great magnates, followed. But in 1254 three important events opened a new chapter. The first of these, of which we shall say more hereafter, was the summons of knights of the shire to the Great Council at Westminster; the second was the return of Simon de Montfort from Gascony; and the third the progress of negotiations for the acceptance of the Sicilian crown by the king's younger son, whereby the already depleted royal exchequer was reduced to utter bankruptcy. Four years of confused constitutional contest ended in the Parliament of Oxford in 1258, at which the king was compelled to agree to an elaborate system of government by baronial committees known as the Provisions of Oxford. The only permanent significance of these Provisions is that they show how the idea of the control of the royal ministers is now beginning to come to the front as a central principle

Henry III., 1217-1272.

Provisions of Oxford, 1258.

of constitutional reform. The failure of the Provisions—a failure due chiefly to disunion among the baronial leaders—brings to the front the great figure of Simon de Montfort, and introduces a new element into the struggle. Feudalism and despotism had struggled for the mastery since the days of William Rufus. Simon de Montfort showed how the monarchy might strengthen itself by alliance with the commons of the realm, and Edward I. was wise enough to learn the lesson.

The *Confirmatio Cartarum*, 1297.

More than thirty years after this, the Charters became for the last time the centre of a constitutional struggle, when Edward I., pressed by wars with France and Scotland, and irritated by the opposition of the ecclesiastical authorities to his demand for a grant, seized the wool of the merchants and quarrelled with his constable and marshal on the question of the liability of the barons for foreign service.

When the king had started for Flanders, the two earls appeared at the Exchequer and forbade the collection of the revenue till the Charters had been confirmed. Unable to resist the demand, the young prince Edward, who was acting as regent, issued the required confirmation, which was ratified by the king at Ghent. This *Confirmatio Cartarum* of 1297 was ratified by the king in the following year, and again in 1299. In 1300 a number of minor complaints were dealt with in the *Articuli super Cartas*, and, finally, in 1301 the Charters were confirmed for the thirty-second and last time. Already some of their provisions had become obsolete, and the line of development of constitutional progress was in the direction of controlling rather than of restricting the executive power of the crown.

CHAPTER VI

THE BEGINNINGS OF PARLIAMENT

In considering the rise of Parliamentary representation, we have to disabuse our minds of the idea that the House of Commons arose out of a popular demand for representative institutions, to which the king was obliged to yield. It was not till the fifteenth century that we can find any traces of a desire for the office of member of Parliament or for the privilege of being represented. Before this time it was the king who demanded the presence of the knights and burgesses, and the knights and burgesses who made every possible excuse for evading the demand.

The rights of the freeman. To understand the development of Parliamentary institutions we must follow the fortunes of the ordinary freeman. As the Anglo-Saxon kingdoms grew in size through amalgamation or conquest, he lost his right to attend the central Folk-moot, but retained his place in the local Shire-moot. The policy of William I. and of Henry II. was to strengthen these Shire-Courts as a counterpoise to the feudal courts, and the freeman was consequently protected in the exercise of such rights as he had. In the Shire-Court he learned to act through elected representatives, who assessed taxes and presented criminals on behalf of the whole body, and who informed the itinerant

justices of any matters on which the central authority required information.

The "greater barons."

Meanwhile the Great Council, nominally a gathering of all the tenants-in-chief of the crown, came to consist of the greater barons and ecclesiastics. The distinction between the greater and lesser barons, important as it becomes, is one the origin of which is obscure. Originally a "baron" is simply the *homo* or feudal tenant of the king—the "king's man." But certain of the more important tenants of the king acquired the right to pay their feudal dues directly instead of through the sheriff, and to bring up their feudal vassals to the host under their own banner. They also acquired, as we saw in clause 14 of the Great Charter, the right to a personal summons to the Council, the lesser barons being summoned *generaliter*, through the sheriff. The king allowed his lesser barons to ignore this summons, but there was always the possibility that he might insist on their presence. For instead of ascertaining the financial possibilities of the kingdom by sending his justices into the local court, he might find it more convenient to call the knights of the shire up to Westminster to supply him with the information.

Knights summoned, 1213 and 1254.

The first occasion on which this actually happened was in 1213, when John, with the struggle with his leading nobles in immediate prospect, summoned a gathering of the armed knights to meet at Oxford, to which each sheriff was also charged to send "four discreet knights to speak with us on the affairs of our kingdom." We do not know whether the assembly ever met.

Forty years later the experiment was repeated. The queen and Earl Richard of Cornwall, who were acting as regents during Henry III.'s absence in Gascony, called a council of the magnates to ask for an aid. The magnates

made the required grant, but expressed a doubt whether the clergy and commons would assent. Accordingly, the regent summoned two knights from each shire to a council in April 1254, to report what their constituents would be willing to give. The only answer of the knights was the presentation of a series of complaints. Five years later the baronial leaders attempted to enlist the knights on their side by summoning three from each shire to an assembly at St. Albans—a move that the king met by instructing the sheriffs to send them to Windsor instead. Apparently they went to neither.

44

Simon de Montfort's Parliament, 1265.

After the battle of Lewes had made Simon de Montfort master of the king and kingdom, his first work was to summon a meeting of the Great Council, at which four knights from each shire were ordered to be present. The Council met and drew up a scheme of government by which the king was to rule by the advice of a council of nine, of which three were to be in constant attendance on him. At the beginning of the following year (1265) de Montfort summoned his famous Parliament. To this assembly those barons who were hostile to the earl were not summoned, but the sheriffs were ordered to send up two knights from each shire, and separate summonses were sent to the leading boroughs and cities, ordering them to send two representatives each to the Council. The towns had supported Simon's efforts at reform, and were accordingly called into consultation on the subject of the settlement of the kingdom.

With the calling of this assembly Simon's work was done. Dissension broke out among the barons, Edward escaped from captivity and raised an army, and the career of the great earl ended at Evesham.

In the early part of Edward's reign knights of the shire

The "Model" Parliament, 1295.

were summoned occasionally to the Great Council, but the Parliament that dictated the future constitution of that body was the "Model" Parliament of 1295. To this Parliament were summoned the archbishops, bishops, abbots, earls, and barons, together with two knights from each shire, and two citizens or burgesses from each city or borough, summoned through the sheriff, and not, as in Simon's writs, directly; also the archdeacon and two proctors from the clergy of each diocese, and one from each cathedral chapter, summoned through the bishop by what is called the *Praemunientes* clause.

The knights of the shire in the local courts.

The Model Parliament forms a convenient halting-place at which we can stop to see the significance of the facts that we have been recording. Let us, first of all, trace the process by which the lesser baron of the Great Charter becomes the representative knight of the shire of eighty years later. The minor tenants-in-chief of the crown would at first have formed a class by themselves, superior in feudal rank to the subtenants with whom they were associated in the local courts. But this distinction gradually broke down, as tenures became more complicated through the growth of the practice of sub-infeudation. And when in 1290 the statute *Quia Emptores* was passed forbidding sub-infeudation, distinctions based on tenure disappeared, and it was ordered that "all possessors of the quantity of property that was requisite for the status of a knight should forthwith accept the privileges and responsibilities of that position, no matter on what tenure they held their lands." This was called "distraint of knighthood."

Meanwhile the minor tenants-in-chief had shared with the other local landowners in every department of local government. "They had served on the juries by means of which most of the judicial work of the county was

carried on. They had played their part in the juries elected to assess taxation." "It was this last matter with which the local courts were busy between 1215 and 1254. In 1220 we find that two lawful knights were chosen in full county court to assess and collect the carucage; in 1225 it is four elected knights of each hundred who assess and collect the fifteenth that has been granted by the Great Council in return for a reissue of the Great Charter; in 1232 an undefined number of knights is assigned for the purpose of merely collecting the fortieth, the assessment being accomplished by a different machinery; and lastly, in 1237, a similar expedient is employed for the collection of a thirtieth of movable goods throughout the kingdom."[1]

The result of all this was that the lesser barons were gradually absorbed in the general body of minor landowners of the shire. And it was the minor landowners of the shire that they represented, for they were elected in the Shire-Court, which was attended by all landowners not specially exempted. As a matter of fact it appears to have been a somewhat difficult task to find any knights willing to serve, and even after they had been elected, provision had to be made for insuring their appearance at the Council.

The House of Lords.

Meanwhile, the gap between the lesser barons and the great nobles was widening. The appearance of representative knights of the shire was, of course, the final end of any right that the minor tenants-in-chief ever had of attending in person. So the great barons and ecclesiastics drew together into a definite body, the right to be summoned to which gradually became hereditary in the case of the lay nobles. This House of Lords, as we may now begin to call it, retained the old right of the Great Council as a judicial Court of Appeal—a right in which the

[1] *Constitutional Essays*, p. 187-188.

elected representatives of the shires and boroughs claimed no share.

Borough representation.

In connexion with the borough representatives several questions arise to which it is not easy to give definite answers. As we have seen, Simon de Montfort sent writs of summons direct to the towns, but in the reign of Edward I. the writs were sent to the sheriffs. The change is not unimportant, for the control of the sheriff over both county and borough representation was one of the circumstances that helped to draw together the knights of the shire and burgesses. A considerable discretion seems to have been left to the sheriff as to what boroughs he selected for the unwelcome task of electing representatives. A little later it became necessary to take measures to prevent the sheriff from excusing boroughs from the duty, and occasionally boroughs were able to induce the central authority to exempt them. In part, this reluctance, both in towns and counties, was due to the fact that each locality was obliged to provide wages for its representatives, at the rate of four shillings a day for each knight and two shillings for each burgess. The requisite sum was raised at the end of the session by a writ *De expendis levandis*.

Payment of members

These wages "formed a large, perhaps insupportable, charge on some of the communities which paid them. In the Parliament of 1406 the wages of members amounted to nearly £5500; £6000 was the whole sum which it granted to the crown. The constituencies therefore paid almost as much to their members as they granted for the support of the kingdom."[1] Occasionally constituencies were able to bargain with their members for reduced amounts, and when the position of member of Parliament

[1] Walpole, *The Electorate and the Legislature*, p. 51.

began to be regarded as an honour rather than a burden, payment of members gradually ceased.

It is interesting to remember that in several cases boroughs refused to pay the wages of their representatives on the ground that they had neglected the duty of attendance.

The franchise appears to have varied greatly in different boroughs, each borough being left free to regulate the matter as it chose. In fact, the borough members were not unfrequently nominated by the sheriff, who was only too glad to find any one willing to serve.

The borough representatives never, in mediæval times, played anything like as large a part as the knights of the shire in Parliamentary life. One reason for this was that the king could always add to the number of boroughs by the grant of charters of incorporation, though as a matter of fact the number of borough members tended to decline rather than to grow during the fourteenth and fifteenth centuries.

On the meaning of the title "House of Commons," and on the name "Parliament," I may be allowed to quote a few words from my lectures on the House of Commons. *The Communes.*
"The word *common*, like the word *commune*, of which it is merely another form, brings out the point that the House of Commons was not merely a House representing the people; it was a House that represented the people organized into local self-conscious political groups. The *commune* is a local assembly, a shire-court or town-court, not a mere mass of individuals like a modern constituency, with no definite political consciousness. So the House of Commons was the representative of the *communitates regni*, the local groups of organized political life in the kingdom."

"The word 'Parliament' belongs to that period in our

"Parliament." history when French superseded Latin as the official language of the law courts. Up to about 1260 our official language was Latin. After 1260, for about a hundred years, it was French. The king's speeches in opening Parliament were in French, and Parliament expressed its opinions and demands in the same language. To this day the royal assent to new laws is given in an old French formula. The first occasion on which Parliament was opened with an English King's Speech was in 1365. Now it was just in this hundred years during which French was our official language that the word 'Parliament' came into use. In France the name was given, not to the legislative body but to the law courts; and the celebrated *Parlement de Paris* is not a Parliament in our sense of the word, but the central Law Court of ancient France."

Separation of Houses. Very soon after the knights and burgesses became an integral part of the Great Council, two things happened. Firstly, the clergy ceased to send representatives. The Church preferred to vote its taxes in Convocation, a constitutional body that was just coming into existence at this time. Then, secondly, the knights and burgesses ceased to sit and vote with the great magnates. Crossing the road from the Palace of Westminster, where the Council met when summoned to London, the representatives of the counties and boroughs assembled in the Chapter-house of Westminster Abbey, which they retained as their usual place of meeting till the time of the Reformation, when Henry VIII., who was moving to his new Palace of Whitehall, gave them St. Stephen's Chapel, where they continued to meet till the Palace was burned down in 1834. The earliest rolls of the House of Commons belong to the year 1278, and the name "House of Commons" first appears in 1304. The first chairman who bears the name of Speaker

(or *parlour*) was Sir Thomas Hungerford, who presided over the Parliament of 1377.

Though London was the normal place of meeting, Parliaments were held at various places to meet the convenience of the king. Thus Oxford, Nottingham, Coventry, Gloucester, York, Leicester, and other places were at different times the scene of Parliamentary sessions.

One last question connected with the rise of Parliament requires consideration. Throughout Europe the thirteenth century was the period of the development of "Estates" and of representative assemblies based on that idea. It is important to understand why our English Parliament did not take the form of an assembly of Estates and share the fate of such assemblies in other countries.

The "Estates of the Realm."

The four fundamental castes of India are the *Brahman* or priestly caste, the warrior caste, the merchant caste, and the *sudras* or peasant caste. Now castes are merely class distinctions that have obtained a definite religious sanction, and the same class distinctions appear in mediæval Europe as the Estates of the Realm—the clergy; the nobles (landowners and warriors); the merchants and burgesses of the towns; and the village freemen and serfs. Omitting the fourth class, which had as yet no political rights, a Parliament of Estates would consist of three houses, representing the ecclesiastical, landowning, and mercantile classes. The English Parliament might easily have taken this form. Why did it not do so?

Three things prevented it. Firstly, Convocation was not a national body. The Provinces of Canterbury and York had each its Convocation, summoned not by the king but by the archbishop of the Province. Convocation could not therefore become an integral part of Parliament.

Parliament not an assembly of Estates.

Secondly, there was no nobility of blood in England.

In France the *noblesse* formed a definite class, every son inheriting the status of a nobleman from his father. But in England this was not so. The younger sons of a peer rank as commoners, and there is therefore, properly speaking, no noble class in England.

Thirdly, the minor landowners threw in their lot, not with the great lords, but with the burgesses of the towns. The causes of this were partly political and partly social. Among the former were the representative character that they shared, and the common interests that often separated them from the magnates, who constituted an organized body from which the smaller landowners were excluded. Intermarriage also helped to create a social bond of union. So when the Lords and Commons finally separated, the representatives of counties and towns, instead of meeting separately, as they might have done, joined forces to form one House. The consequence of this was that the two Houses of Parliament represented the nation as a whole, and not the three Estates of the Realm as such.

CHAPTER VII

THE DEVELOPMENT OF PARLIAMENT

THE death of Edward I. marks the end of the long period of constitutional construction that began with the Norman Conquest. By that time our national institutions had taken the form that they still retain. Edward I. had given a new interpretation to the old idea that the king must act with the "counsel and consent" of the people. The maxim laid down in the Writ of Summons to the Model Parliament of 1295, that "as a most just law exhorts and decrees that what touches all should be approved of all, so also it is very evident that common danger should be met by means devised in common," gave to the Commons of the realm a definite place in the Great Council. The House of Lords had now become a hereditary body of advisers of the crown, and the highest judicial court. The Central Courts of Justice had been organized in the form that they retained till 1875, and the itinerant justices administered justice in the local courts as they do still. The King's Council had taken shape as a defined body of royal officials. And behind all these developments lay the great principle that the authority of the crown was not arbitrary but legal.

The Constitution, 1307.

The questions at issue in the century that follows, and indeed through the whole course of our national history from this time, had reference to the relation of the various

Relation of the organs of government.

organs of government to each other. Up to the death of Henry V. the House of Commons was steadily gaining power; then, after a short period of lack of governance, the king became apparently supreme. In the seventeenth century Parliament won back the authority that it had lost, and the Revolution of 1688 inaugurated what may not incorrectly be described as the period of the supremacy of the House of Lords. George III. made a determined attempt to restore the personal authority of the sovereign, and the outcome of the struggle was the supremacy of the Cabinet. With the Reform Act of 1832 the supremacy of the House of Commons began, and with the second Reform Act, in 1867, power began to pass from the House of Commons to the people, or, more correctly, to the Party organizations in the country. All these changes we shall have to consider in detail in succeeding chapters.

Edward II., 1307-1327. The strong personality of Edward I. had held together the various elements in the life of the nation; under the feeble and selfish rule of his son they began to fall apart. In the contests of the reign we can trace the rivalry of three distinct groups of men. The body of officials that Edward I. had built up forms one class. Distinct from these are the great nobles, who demand the recognition of their claim to act as hereditary advisers of the crown. At their head stands Thomas of Lancaster, the cousin of the king. His career reminds us at times of that of Simon de Montfort, but his aims, unlike those of the great earl, are purely selfish. At best, he is the champion of a class, not of the people. His only solution for the difficulties of the time is a return to the old expedient of a committee of barons to supervise the king, and the efforts of the Lords Ordainers of 1310 proved as futile as the Provisions of Oxford had proved fifty years before.

The third group consists of the Court party—a motley collection of men whom the king gathered around him, and to whom the chroniclers of the time attribute most of the misgovernment of the reign.

Growth of influence of Parliament.

The only fact of permanent constitutional importance in the reign is the growth of the influence of Parliament. The first Parliament of the reign was held at Westminster in 1309. The king was in dire straits for money, and the baronial discontent was rapidly growing. A grant of money was made, but it was accompanied, as had been the case in the Parliament of Lincoln in 1301, by a statement of grievances. This statement did not, as yet, demand fresh legislation, but required the redress of various illegal acts of which the king and his ministers had been guilty. Thirteen years later, when the fall of Lancaster had left (1322) the king free, another Parliament met at York. This and the Parliament of 1327 were the only occasions before the time of Henry VIII. on which representatives from Wales were present. The York Parliament showed its resentment at the attempt of the great nobles to establish ordinances by their own authority. "The matters which are to be established for the estate of our lord the king and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in parliaments by our lord the king, and by the consent of the prelates, earls, and barons, and the commonalty of the realm, according as hath been heretofore accustomed." The importance of this assertion of constitutional custom can hardly be exaggerated. It shows how completely the representatives of the Commons had established their place in the national system.

Deposition of Edward II.

Five years later the Parliament of 1327 met to sanction the deposition of the king, and accept the young Edward

as his successor. To avoid the dangerous precedent of a deposition, Edward II. was induced to resign, and was shortly after murdered. After the short and inglorious period of the supremacy of the queen and Mortimer, the young king asserted himself, and in 1330 began his long reign of nearly fifty years.

Edward III., 1327-1377. The king with whom it is most natural to compare Edward III. is Richard I. Both sovereigns combined selfishness and extravagance with ambition and love of adventure; both had England "tenderly at heart" because it supplied money for their wars; from both the Commons of the realm were able to wrest large concessions as the price of their grants. So the reign of Richard I. was a great time of advance in the local self-government of the English towns, while the reign of Edward III. established the rights of the House of Commons over taxation, and to some extent over legislation also. The only permanent benefit that England derived from the French war was the growth of Parliamentary authority that resulted from the financial needs of the crown.

Parliaments of the reign. In the early Parliaments of the reign the custom of attaching to grants petitions for redress of grievances became definitely established. In the Parliament of 1340 these petitions were referred to a committee, which drafted the statutes necessary to give effect to them. Of these two are of special importance—one limiting the royal right of purveyance (which practically meant the right to appropriate private property for feeding the court on its progresses) and the other abolishing the right of the king to levy "tallages" without consent of Parliament. In the following year a quarrel broke out between the king and Archbishop Stratford, his chief minister, and the Parliament that met in that year was emboldened to make several new

demands, the two most striking being that the royal accounts should be audited and that the ministers of the crown should be selected with the approval of Parliament. Edward was obliged to yield, but withdrew his concessions as soon as Parliament had been dissolved.

Provisors and Præmunire.

It would be impossible to tell in detail the history of the Parliaments of the twenty years that followed. The first Statute of Provisors—the earliest attempt to check by statute the appointment of foreigners to ecclesiastical office in England by the direct action of the Pope—was passed in 1351, and was followed two years later by the more famous statute (at first an ordinance) of Præmunire, prohibiting appeals to the Pope from the English courts. Meanwhile, in 1352, the Commons requested the king to define clearly the crime of treason, the undefined character of which had given a dangerous power to the King's Court. The result of this request was the great Treason Act of 1352, the details of which it will be convenient to consider in connexion with the Tudor developments of treason. A statute of 1362 ordered the use of the English language in the law courts, and another statute of the same year further restricted the right of purveyance, and laid it down that articles "purveyed" for the king's use must be paid for in cash.

The Good Parliament, 1376.

The closing years of the reign were notable for two things. The first of these was the growing anti-clerical feeling that showed itself in attacks on clerical ministers of the crown, and demands for heavier taxation of Church lands. The other was the great effort at reform that gives its name to the Good Parliament of 1376.

The king was sinking into his dotage, and was surrounded by a group of greedy courtiers who were suspected of enriching themselves out of monies granted for the war.

Of the war itself the nation was heartily weary. In its efforts at reform the Parliament of 1376 was supported by Edward the Black Prince till his death in June of that year. The most important event of this Parliament was the invention of a new method of dealing with powerful offenders by impeachment—that is, by a form of trial in which the House of Commons, acting through their Speaker, or by elected representatives, prosecutes offenders at the bar of the House of Lords. Lord Latimer and Richard Lyons, two of the king's household ministers, were condemned in this way, as well as several minor offenders. The efforts of the Good Parliament were frustrated by John of Gaunt, the champion of the Court party, who in the following year caused a packed Parliament to reverse the proceedings of the previous year. So matters drifted on till the death of the king in June 1377.

Richard II., 1377-1399. The reign of Richard II like that of James II., is important in constitutional history chiefly on account of the revolution with which it closes. After a stormy beginning, due to the efforts of the king to emancipate himself from the tutelage of the great nobles, the constitutional machinery moved tranquilly for some years. Then the king made a determined bid for absolute power, striking down his leading opponents with ruthless severity, and overriding the authority of Parliament by the assertion of the royal prerogative. By the banishment of Henry of Hereford and the confiscation of the Lancastrian estates on the death of John of Gaunt, Richard provided a leader for the national resistance. Opposition to the foreign policy of the crown, the social unrest that had shown itself in the Peasants' Revolt of 1381, disapproval of Richard's patronage of the Lollards, all helped to fan the flame of popular discontent. In 1399 the crash came. The landing of the exiled

duke, ostensibly to claim his hereditary possessions, gave the signal for a general desertion, and the last of the Plantagenets went down without a struggle.

The Revolution of 1399, like that of 1688, was carried out with careful regard for the forms of the Constitution. Henry rested his claim to the throne on a threefold basis. "I, Henry of Lancaster, challenge this realm of England and the crown with all the members and the appurtenances, as that I am descended by right line of blood, coming from the good lord King Henry III., and through that right that God of His grace hath sent me with help of my kin and my friends to recover it, the which realm was in point to be undone for default of governance and undoing of the good laws." The "Estates of the Realm" having considered and accepted the claim, Henry was solemnly enthroned. Thus Henry's title rested on the claim of hereditary descent, successful adventure, and Parliamentary sanction. To the Church, Henry appeared as a champion against Lollardy, as William of Orange in 1688 appeared as the champion against Roman Catholicism; to the Lords the accession of one of themselves to the throne gave promise of a full recognition of their rights and privileges; while the Commons regarded the new king as the defender of constitutional rule and the "saviour of society" from the strange doctrines of social disorder that were widely diffused among the unenfranchised classes. **Revolution of 1399.**

Before the new king had been long on the throne, a reaction from these high hopes set in, and the closing years of the reign were years of disillusionment and dissatisfaction. But in one direction at least Henry fulfilled the undertaking that he gave at his accession. His rule was strictly constitutional, and the financial needs of the crown enabled the Commons to secure important **Henry IV. and the Commons.**

powers and privileges. As early as 1401 we find the demand made that redress of grievances should precede supply, a request to which the king declined to consent. The Unlearned Parliament, that met at Coventry three years later, is chiefly interesting through the instructions issued by the king that no lawyers should be returned as members. In 1406 the Commons won an important victory in the matter of the audit of the royal accounts. At the close of that session the king issued a scheme of reform in which he undertook "to elect and nominate councillors pleasing to God and acceptable to his people." A statute of this year throws some light on the methods of election, by ordering "that the knights of the shire shall be chosen by the free choice of the county court, notwithstanding any letters or any pressure from without, and that the return should be made on an indenture containing the names and sealed with the seals of all who took part in the election." "The Parliament of 1406 seems," in Dr. Stubbs' words, "almost to stand for an exponent of the most advanced principles of mediæval constitutional life in England."

Initiation of money grants.

In the following year a fundamentally important constitutional question arose, owing to the king having consulted the Lords as to a grant for public defence. The Commons protested that it was their right to initiate money grants, and in the end the king fully recognized the principle that the two Houses must agree as to money grants, and that the grant, when agreed on, should be reported through the Speaker of the House of Commons. In the Parliament of 1410 a statute was passed inflicting a penalty on all sheriffs who do not hold elections in legal form, and directing the itinerant justices to make inquiries into the matter. The history of the last two Parliaments

of the reign is obscure. There are indications of friction between the king and the Commons, but the cause of it is not clear. In 1413 Henry died.

Under Henry V. England enjoyed the brilliant after-glow of its mediæval history before settling down to the troubled and stormy twilight of the period that followed. The new king might justly be described as the finest flower of mediæval England. He was "a laborious man of business, a self-denying and hardy warrior, a cultivated scholar, a most devout and charitable Christian." Later ages have felt it a grave blot on his character that he plunged England again into the French war that had already worked such havoc on our national character, and have felt that the glories of Agincourt were dearly paid for by the financial and moral bankruptcy of the reign that followed. But it must be remembered that death cut short the career of the king before he had had time to show how far he was capable of the larger task of constructive statesmanship that might have made Agincourt for France what Senlac was for England. Henry V. 1413-1422.

The death of Henry V. in 1422 is a convenient halting-place from which to look back over the course of constitutional development since the death of Edward I. During this time the powers of the House of Commons had been growing in three directions—in taxation, in legislation, and in regard to the appointment of the Council. Constitutional develop-ment, 1307-1422.

With regard to taxation, it is important to remember that grants were generally made, not to meet the ordinary expenses of government, but to provide for special expenditure, particularly on war. But it became increasingly difficult for the king to "live of his own." For, on the one hand, the expenses of government increased, and on the other hand there was no other way in which Taxation.

the king could reward faithful supporters, or win over nobles of doubtful loyalty, except by grants from crown lands or pensions from the national exchequer. The king's demands for revenue therefore grew, and the opportunities of Parliament grew correspondingly. At first each "Estate" made its grant separately, and the clergy continued to vote their taxes in Convocation till 1660. But the Lords and Commons soon began to act together, and grants are made by the Commons "with the advice and assent" of the Lords.

In regard to direct taxation, which generally took the form of a grant of "a tenth and fifteenth" (that is, a tenth of all "moveables," or personal property, in boroughs and a fifteenth in counties), the dependence of the king on Parliament was clearly recognized. The case of customs duties—"tonnage and poundage"—was more complicated. More than once Edward III. entered into private negotiations with the merchants for a special tax on wool, but Parliament regarded such proceedings with great jealousy. Ultimately, tonnage and poundage came to be voted to each king for life, Henry V. being the first king to whom this grant was made.

Appropriation and audit.

Besides the right to vote taxes, Parliament from time to time made two other important claims. The first was the claim to appropriate supplies to definite objects, so that (for example) money granted for the French war should not be spent on royal favourites. Out of this grew the second claim, that the royal accounts should be presented to Parliament. Though often resisted by the kings, Parliament persisted in the demand, and under Henry IV. made good its claim to appoint auditors to see that money had been spent on the objects for which it was voted.

It is important to remember, in connexion with this,

that as yet there was no distinction between the king's personal income and the national revenue. All the expenses of government and of the royal household were paid out of one purse. It is not till the end of the seventeenth century that the personal finances of the sovereign begin to be dissociated from the national finances.

Legislation.

In regard to legislation, the House of Commons advanced more slowly. At first statutes were "on the petition (or request) of the Commons by the advice and assent of the Lords." The actual drafting of the statutes took place after the Commons had made their grant and gone home. But after a time the Commons began to postpone their grants to the end of the session in order that the statutes founded on their petition might receive the royal assent before they left; and before the end of the Middle Ages it became customary for the Commons to send up bills ready drafted. When and how the custom arose of reading bills three times in each House we do not know.

Control of the Council.

The third direction in which the powers of Parliament were growing was in relation to the "Privy Council," as we may now begin to call it. It will be more convenient to deal with the history of the Council in the next chapter. The two special points for which Parliament was contending were (1) that the king should nominate his Council "in Parliament," that is, that he should submit the names of his councillors to Parliament for approval. This demand, if it had been permanently successful, would have given Parliament the appointment of the ministers of the crown, and so laid the foundations of a Cabinet system ages before it actually began; (2) that ordinances passed in Council should not have the force of statutes unless confirmed by Parliament. An "ordinance" was intended to be a more temporary form of legislation than a statute,

and though the exact limits of the royal power of issuing ordinances was not very clearly defined, the normal process of legislation became Parliamentary.

The Speaker.

During the fourteenth century the office of Speaker was steadily growing in importance. As the vehicle of communication between the House of Commons and the crown, the Speaker had the right of access to the king, and it was his business to represent to the king the wishes of the Commons, and to bring back royal replies.

At a later period the Speaker came to be regarded as a royal agent, and "Committees of the whole House" originated partly in a desire for freer discussion than was possible with the Speaker in the Chair, for the Chairman of Committee had not the opportunity of reporting the doings of the House to the king.

The privileges of Parliament.

A little later than the time that we have now reached, it became the first duty of the Speaker, after the confirmation of his election by the crown, to claim the privileges of the House of Commons. These "privileges" had gradually come to be defined, and were jealously guarded by the House. They are practically summed up in two claims—the claim to freedom of speech, and the claim to freedom from arrest and molestation. The former right was a necessary protection of any deliberative assembly, and involved the doctrine, definitely admitted by Henry IV., that the king was bound to place the most favourable construction on all words spoken in Parliament, and turn a deaf ear to any who sought to make mischief between him and the Commons. The latter goes back to the first beginnings of our national history. By a law of Ethelred, "if the king call his people to him, and any one there do them evil," he must give double satisfaction for the attack, and also pay a fine to the king. In later times immunity

from arrest is closely associated with freedom of speech. There are a few examples in the Middle Ages of imprisonment of members for words spoken or acts done in Parliament, but the House was generally able to secure the liberation of the offender, and the recognition of the principle of immunity. It was not till the time of the Stuarts that the privileges of Parliament begin to be of vital importance.

The House of Lords gradually became more definite in its constitution. The titles of Duke and Marquess were introduced in the course of the fourteenth century, the former being at first confined to members of the royal house. They conferred no rights but those of ceremonial precedence. Till the end of the fourteenth century barons were created by writ of summons; that is to say, a writ summoning an individual to the House of Lords made him a peer, and gave him a claim to receive such writ always in future, and his heirs after him.

The House of Lords

In the following century peerages began to be created, as they are still, by "Letters Patent," that is, by an open letter from the king conferring the title. This letter generally limits the succession to the "heirs male" of the first peer, though the crown may regulate the succession in any other way.[1] But fresh peerages were seldom created during the Middle Ages, and the number of lay peers tended to decline, so that the ecclesiastical members of the Upper House—the bishops and mitred abbots—constituted the majority of the House of Lords from the fourteenth century till the Reformation.

Till 1430 the electorate for knights of the shire con-

The electorate.

[1] For example, Lord Roberts' Patent provides for the succession of his daughter, and Lord Kitchener's of his brother. It was decided in 1856 by the Committee of Privileges of the House of Lords that the right of the crown to create life peers had lapsed by disuse (Lord Wensleydale's case).

sisted of all suitors of the Shire-Court, but in that year an important statute was passed limiting the franchise to resident freeholders having land of the annual value of forty shillings—a sum equivalent to at least forty pounds of modern money. The preamble of the Act complains of the "very great, outrageous, and excessive number of people, of which most part was people of small substance and of no value, whereof every of them pretended a voice equivalent as to such election with the most worthy knights and esquires." The "forty-shilling freeholder" remained the foundation of the electoral system in the counties till the Reform Act of 1832.

The number of knights of the shire remained unchanged, except that at a later date the Palatine counties of Chester (1541) and Durham (1675) began to send representatives, and Henry VIII. added representatives from Wales (1538); but the number of borough members declined steadily during the fourteenth century, the boroughs being glad of any excuse to evade the obligation of being represented, with the corresponding obligation of paying their representatives. In the fifteenth century some boroughs that had ceased to send members were restored to the list—the right to be represented having begun to be regarded as a privilege. The franchise in the boroughs varied very greatly. Some boroughs—eleven altogether[1]—secured the right to the status of counties, and had their own sheriffs and their own writs of summons; and in such cases the "forty-shilling freehold" franchise was adopted.

Duration of Parliament.

After 1300 Parliaments met frequently; a statute of 1330 even declared that Parliaments "should be holden every year, or more often if need be." This statute was not

[1] London, Bristol, York, Newcastle, Norwich, Lincoln, Hull, Southampton, Nottingham, Coventry, Canterbury.

strictly observed, but in 1340 there were three Parliaments, and in 1328 four. After the accession of Edward IV. infrequent Parliaments became the rule. Till the Tudor times Parliaments never sat for more than one session, a new election being held for each meeting. Thus, for example, in the year 1328 there were four general elections.

By the end of the reign of Henry IV. the Parliamentary system appears fully established; in fact it had developed too fast, and the confusion of the period that followed showed that constitutional institutions had grown faster than executive efficiency. More than a century of the supremacy of the executive was needed before Parliament was able effectively to assert the constitutional position that the fourteenth and fifteenth centuries had given it.

CHAPTER VIII

LACK OF GOVERNANCE

The Privy Council.

BEFORE we deal with the collapse of executive authority that followed on the death of Henry V. and lasted till Bosworth Field swept away the last Yorkist king, we must say something of the rise of the Privy Council. As we have already seen, the Norman kings gathered around them a small body of officials who constituted an informal Perpetual Council. This body does not appear to have had any definite constitution till the beginning of the thirteenth century, when the minority of Henry III. made an executive organ of government necessary. Under Edward I. this *concilium ordinarium* grew into a clearly defined body, separate from the *Magnum Concilium* and from the law courts, though it continued to exercise judicial functions, and the oath of secrecy and fidelity that was now taken by every councillor included a promise "to do justice honestly and unsparingly." The king claimed absolute discretion in the selection of his councillors, except that the archbishops and a few great officials had an *ex-officio* right to attend. It was one of the chief objects of the nobles, in their various efforts to restrict the authority of the crown, to secure the right to nominate the Council; and we have already seen how at a later time Parliament made the same claim, and for a time (from 1404 to 1437) successfully.

We can see one indication of the development of the work of the Council in the fact that from 1386 its proceedings are recorded in writing. The early years of the reign of Richard II. strengthened its authority, as the minority of Henry III. had done a century and a half before; and the accession of Henry IV. brought it more directly under the authority of Parliament. Early in the fifteenth century the name Privy Council came into use. The introduction of this new title appears to be connected with a change in the constitution of the Council, which had grown inconveniently large and was overloaded with official members. "Great inconvenience" resulted from the fact that matters "spoken and treated in the Council" were "published and discovered." So the inner circle of sworn councillors began to hold meetings to which the official members were not summoned, and so gradually superseded the larger body in much the same way as the Cabinet has superseded the Privy Council. — Development of the Council.

About the beginning of the fifteenth century commoners appear for the first time as members of the Council. Councillors were generally appointed to hold office during the king's life, subject to royal right of dismissal at any time. They were paid large salaries, varying according to their rank. The whole work of government was in their hands. As they derived their authority from the king, their tendency was to extend and consolidate the power of the crown, while taking steps to ensure that the king should act with their "counsel and consent." One of the most effective ways in which they secured this was by the control of the Great Seal, which had to be affixed to all royal proclamations and writs to give them validity. The Great Seal was in the custody of the Lord Chancellor, and had to be affixed at meetings of the Council. Originally a — Relation with the crown.

security against forgery, this regulation became an important guarantee that the king should act with his Council. The kings attempted to evade this restriction by the use of their private or Privy Seal, but the custody of this seal passed to the hands of the Lord Privy Seal, and so came under the control of the Council.

The importance of all this lies in the distinction that it implies between the personal will of the sovereign and his official will expressed in a certain definite way. The royal will is only effective when it flows *along certain definite channels.* As the appointment of the Council was in the hands of the king, he could generally make his will effective if he chose, but under a weak king, or during a minority, the actual power of the Council was very great.

Henry VI., 1422-1461. The earliest years of the reign of Henry VI. are the high-water mark of the influence of the Council. The period is remarkable for this reason, that while the machinery of government appears thoroughly well-developed and efficient, it breaks down hopelessly in practice. It is necessary to understand the causes of this break-down of governance, for unless we do so we cannot understand the real significance of the Tudor period.

The reign of Henry VI. falls into three periods. To the first of these, the period of the king's minority, belong the heroic efforts of the Duke of Bedford to maintain English ascendance in France, and the struggles in the Council between the factions of the Duke of Gloucester and Cardinal Beaufort. The second period comprises the fourteen years of the king's personal rule. Externally, it was the period of the decline of English power in France, and internally of the rise of the two parties whose rivalry was destined to end in open war—the party of Queen Margaret, supported by the ill-fated Suffolk and then by the

Duke of Somerset, and the party of the Duke of York, who came to the front as the champion of efficiency and good government, and only became an open claimant to the crown when it became manifestly impossible to hope for this under the rule of an imbecile king and an imperious and self-willed queen. The rising of Jack Cade in 1450 opened the period of violence and confusion that lasted, with short intervals of insecure peace, till the direct line of succession of both the rival houses had perished, and a new "saviour of society" arose, in the person of Henry Tudor, to re-establish order.

Causes of lack of governance.

What were the causes of the lack of governance that made these disorders possible? The first cause was undoubtedly the poverty of the crown. The expenses of government had increased (for example, the defence of Calais was an immense drain on the royal resources), while the income of the king had diminished, through grants of royal lands and pensions to nobles whose support it was necessary to buy. As a result, salaries were constantly in arrear, loans were raised at high rate of interest, and the whole machinery of government was out of joint. A student of English national finance in the fifteenth century is constantly being reminded of the confusion and insolvency that have made the finances of the Ottoman Empire a byeword in nineteenth-century history.

Royal poverty.

Moral decline.

But while the authority of the crown was being undermined by financial difficulties, the moral influence of the Church was declining, and the power of the great nobles was increasing. "The two cankers of the time were the total corruption of the Church and the utter lawlessness of the aristocracy." The French wars had enabled the great lords to recover, in another form, the power that they had lost through the decay of Feudalism. They had become

semi-independent leaders of great bands of armed followers who wore their liveries and were prepared to follow their fortunes either in French wars or English riots. In return for this, the great noble gave them the protection of his name and influence, against which the local courts were powerless. With the break-down of local justice, violence began to be met by violence, and noble families like the Nevilles and the Percies waged war against each other with almost the same impunity as the great French vassals had done in the early days of Feudalism.

The loss of the French possessions of the crown increased the disorder at home by depriving these baronial armies of the chief outlet for their nefarious energies. "The English lords ousted from France returned to England at the head of bands of men, brutalized by long warfare, demoralized by the life of camps and garrisons, and ready for any desperate adventure."

Power of great nobles.

The concentration of estates in the hands of a few great families placed enormous influence at their disposal. A noble like the great Earl of Warwick controlled resources far in excess of those of the king, for the Beauchamp estates lay in twenty two counties of England, besides ten great castles and a hundred manors in Wales.

In dealing with these nobles, the Lancastrian dynasty was hampered not only by its poverty but also by the insecurity of its title. To the great lords Henry of Bolingbroke appeared as one of themselves; and where one successful adventurer had climbed, others might hope to follow. The nobles who supported the Lancastrian cause did so, for the most part, from no chivalrous regard for the divinity that doth hedge a king, but from purely interested motives. Even the Earl of Warwick, the only baronial leader who shows signs of real statesmanship,

often appears to be playing the game of personal advancement rather than of good governance.[1]

I have already mentioned the break-down of the judicial system. Of this we have abundant evidence. Where open coercion was impracticable, bribery was resorted to. The poor suitor, whose cause was not championed by some local magnate, had scant chance of redress. In the words of Cade's proclamation, "The law serveth of nought else in these days but to do wrong, for nothing is sped almost but for mede, drede and favour,[2] and so no remedy is had . . . in any wise." Judicial corruption.

When once it became clear that violence might be practised without fear of punishment, bands of armed men, under the command of some adventurer, often of good birth, set all authority at defiance.

Sir John Fortescue, Chief Justice under Henry VI., whose treatise on the governance of England is one of our most valuable sources of information for the constitutional ideas of the time, propounds a programme for reducing the power of the great nobles by (1) an Act of Resumption restoring to the crown the lands that it had alienated, and the use of the royal veto on the marriage of heiresses to prevent the accumulation of lands in a few hands; (2) the limitation of the number of offices that one man could hold; (3) the exclusion of the great nobles from the Privy Council, which is to become a bureaucratic body.[3]

But what of Parliament? Its efforts to secure the control of the executive had helped to weaken the power of the crown just at the time when it most needed to be Decline of Parliament.

[1] Oman's *Warwick the Kingmaker* is a brilliant study of the career of the great Earl, and of the period generally.

[2] *I.e.* bribery, fear, or influence.

[3] See Plummer's Introduction to his edition of Fortescue, to which this chapter is greatly indebted.

strengthened. And as the struggle went on it sank more and more into the position of a tool of the party predominant for the moment. In the disorders of local administration the knights of the shire became the nominees of the magnate whose influence was strongest. Most of the Parliaments were packed by the faction that was in the ascendant, and used to carry Acts of Attainder by which the leaders of the opposite party were condemned to the loss of property and life. Complaints are made during the reign of Henry VI. that Parliaments are summoned to meet in various out-of-the-way places, and kept in session till the members are too weary to resist the demands of the court.

In face of the appeal to mere force, the Commons of the realm were impotent, and the whole fabric of constitutional rule, built up in the previous period, appeared to be condemned to futility. But more than a century later, the leaders of the Commons went back to the period of Edward III. and Henry IV. for precedents to support the claims of Parliament to supremacy. The knights of the shire of the fourteenth and fifteenth centuries were forging weapons for a contest that still lay two centuries ahead.

The Yorkist kings, 1461-1485.

The accession of the Yorkist dynasty made little change in the evils of the time. Edward IV. was probably superior to his father as a military leader, but was certainly inferior to him in capacity for efficient administration. From confiscated estates and other sources he was able to secure a revenue that left him, to a large extent, independent of Parliament. He was therefore able to pursue his own policy, such as it was. After Tewkesbury no leader was left to focus the national discontent, for the claims of Henry Tudor were not yet seriously considered. The closing years of the reign were a time of precarious and

ignoble peace, but the death of Edward left England no nearer to stable and settled government.

The Lancastrian dynasty had ruled England for fifty years; the Yorkists only held the throne for half that time. It may be that Richard III. was not the monster of iniquity with whom Shakespeare has made us familiar, but the Yorkist record was stained with crimes enough to make the historian breathe more freely when the last of the house, showing to the end the fierce courage that was the one virtue of his dynasty, went down like a hunted wild beast to his death on Bosworth Field.

CHAPTER IX

THE PERSONAL MONARCHY OF THE TUDORS

Henry VII., 1485-1509.

We have already suggested a comparison between the Revolution of 1399 and the Revolution of 1688. In some respects the position of Henry VII. resembles even more closely that of William III. Both were, in a measure, foreigners, for Henry had lived so much abroad that he was out of touch with English ideas; both were accepted by the nation as deliverers from the danger of autocratic rule; both derived whatever hereditary right they had from their wives, for though Henry did not marry Elizabeth of York till his title to the crown had been fully accepted, yet his marriage undoubtedly brought him a large measure of Yorkist support. Henry VII., like William III., acted as his own chief minister; and while scrupulously observing constitutional forms secured the substance of power in his own hands. Both sovereigns were accepted, with resignation rather than with enthusiasm, by a nation weary of constitutional contest. The merits of both have been perceived more clearly by after-times than by their contemporaries.

The best testimonial to the ability of Henry VII. is to be found in the contrast between the condition of the country at his accession and at the time of his death. He

was a tireless worker, singularly free from the worst faults of kings—licentiousness, vindictiveness, love of warlike adventure. As presented to us by contemporary historians, he does not appear a lovable character, even acts of clemency and kindness appearing to be based on cold calculation rather than on generous impulse. His character seems to have deteriorated in the last years of his reign, after the death of Morton, his wisest councillor, and of Prince Arthur, his eldest son. But whatever estimate we may form of his personal character, there is no question of the ability with which he laid the foundations of a strong monarchy, resting on the support of the people, and able to provide the peace and good government that England needed.

In estimating the strength of the Tudor monarchy three facts must be remembered.

1. The non-political character of the period. The Renaissance drew men's thoughts, for a time, away from political questions, and with the opening of the sixteenth century came the great age of religious controversy. The Reformation brought with it new external and internal dangers, to meet which a strong monarchy was necessary; and the spacious days of Elizabeth turned men's thoughts to trade, adventure, and colonization. With all these new interests to occupy men's minds they were well content to leave the business of government to the sovereign and his expert advisers, so long as the ordinary citizen was allowed to pursue his avocations without undue interference. **The Tudor monarchy.**

2. The special characteristic of the Tudor system was its scrupulous observance of constitutional forms. Generally speaking, the interests of the king and the nation were identical, and collisions between the crown and Parliament were very rare in Tudor times. But when such

collisions did occur, a timely concession by the sovereign averted serious danger. The deferential language of the Tudor Parliaments towards the sovereign was not inconsistent with a jealous watchfulness over their powers and privileges.

3. The confusion of the fifteenth century had been due to the poverty of the crown and the "too great might" of the great nobles. The strength of the Tudor monarchy was due to the weakness of the nobles and the wealth of the crown.

Weakness of the nobles.

When Henry VII. succeeded, the great nobles had already been shorn of much of their power. Acts of Attainder had confiscated many estates, and a good many of the ablest leaders had perished in the wars, leaving children to inherit their titles and lands. Henry deliberately set himself to reduce their independence still further. His first step was to strengthen the judicial authority of the Council.

The "Star Chamber"

In spite of protests from the ordinary courts, the Council had always exercised criminal jurisdiction, especially in the case of powerful offenders who could defy the local courts. This jurisdiction was regulated by a statute of 1487, which created a special court, consisting of the Chancellor, Treasurer, Lord Privy Seal, a bishop, a temporal lord, and two judges, who were empowered to call before them persons accused of riots, perjury, bribery of jurors, and certain other kinds of misconduct, and to "punish them according to their demerits as they ought to be punished, if they are thereof convict in due order of law." This Act has sometimes, though not quite correctly, been described as the foundation of the Star Chamber. All that it did was to create a special committee to exercise certain of the judicial rights already possessed by

the Council. Towards the end of the reign of Henry VIII. the Committee was reabsorbed by the Council. Properly speaking, the Star Chamber after this time was simply the Council meeting for judicial business. The "Star Chamber" was the name of the room in which it was accustomed to meet, and first appears as a name for the body meeting there in a statute of 1504.

The judicial powers of the Council provided the king with a valuable instrument for curbing the power of the great nobles, and supporting (or indeed superseding) the work of the ordinary courts. Trials before the Council were conducted without a jury, the accused was obliged to answer on oath, and after 1468 we hear of the use of torture to extract evidence. In all these respects the procedure of the Council was entirely different from that of the ordinary courts, and though the exceptional conditions of the time led men to acquiesce in the extension of the authority of the Council, it was inevitable that, sooner or later, that authority would be resented and resisted. The Star Chamber claimed the right to punish by fines, imprisonment, and sometimes by mutilation; it could not inflict the penalty of death or confiscation.

Livery and maintenance.

Among the abuses with which the new Committee had to deal were those of livery and maintenance. Several statutes had already been passed to restrict the number of retainers that a noble might have, but they had never been enforced. In 1504 the Statute of Liveries transferred the trial of all such cases to the "Star Chamber," which was strong enough to render the law effective. Maintenance, or the supporting of one party in a lawsuit in which the supporter had no direct concern, was also made an offence with which the Star Chamber could deal.

Besides these direct blows at the power of the nobles

Henry harassed them by financial exactions, and deprived them of political influence by choosing ecclesiastics or commoners as the ministers of the crown. Instead of depending on baronial levies for military purposes, he revived the old militia system, and retained in his own hands the only train of artillery in the country.

Wealth of the crown.

The other great evil that Henry set himself to reform was the poverty of the crown. The reputation for avarice that Henry's ministers, Empson and Dudley, earned for their master, was really due to his determination to acquire a revenue that should make him independent of Parliament. The clemency that punished rebels with heavy fines in place of death, the foreign policy that threatened war in order to secure money indemnities as the price of peace, were part of the same policy.

But though Henry is said to have handed on no less a sum than £18,000,000 (in modern currency) to his son and successor, he was not niggardly in his expenditure. "He encouraged scholarship and music as well as architecture, and dazzled the eyes of foreign ambassadors with the splendour of his receptions."

During the twenty-four years of Henry's reign Parliament met only seven times. Yet the legislative record of the reign leads Bacon, in his Life of Henry VII., to claim for the king that he was the best law-giver of the nation since Edward I.: "In the making of good laws he did excel."

One useful measure of the reign was a modification of the treason law, which Bacon describes as too magnanimous to be politic. It enacts that support given to a king *de facto* shall not be accounted treason against the king *de jure*. The preceding period had shown the evils of a system that allowed every successful aspirant to the crown

to treat as guilty of treason all who had fought for the dethroned rival. By this statute the supporters of the king who was in actual possession of the crown were guaranteed against punishment by any claimant who dispossessed him. The Act constituted a strong inducement to the subjects of the crown to be loyal to the existing king, and that was probably Henry's object.

From the constitutional point of view, the reign of Henry VIII. falls into three periods—the period of Wolsey's supremacy, the seven years of the Reformation Parliament, and the last ten years of the reign, the years of the supremacy of Cromwell and of the reaction that followed his fall. Henry VIII., 1509-1547.

Henry succeeded to the throne under happier auspices than any king had done since Edward I. Uniting in his own person the claims of Lancaster and York, well provided by the foresight of his father with financial resources, young, handsome, popular, a typical product of the many-sided life of the Renaissance, he captured the imagination of the nation, and retained to the end of his life a personal popularity such as few kings have enjoyed. He was served by two ministers of supreme ability—Wolsey and Cromwell—and cast both aside without scruple as soon as they were no longer useful to him. He developed the treason law into a weapon with which to create a reign of terror, and struck down without mercy those who dared to resist his will. Yet through all the latter years of his reign he seemed the one man who could defend the country against the outbreak of contests of which no man could foresee the end; and the history of the ten years that followed his death shows how much his personal authority had meant for England.

The twenty years of Wolsey's supremacy are notable,

Wolsey, 1509-1529.

from the constitutional point of view, chiefly as years of non-Parliamentary government. The only important Parliament of these years, which met in 1523, with Sir Thomas More as Speaker, showed its independence of spirit by refusing to discuss a royal demand for money till Cardinal Wolsey had withdrawn. Two years later, when money was needed for war with France, Wolsey tried to avoid calling Parliament together by attempting to raise an "Amicable Loan"; and when this failed fell back on the old expedient of Benevolences.

The king and Parliament.

With the fall of Wolsey in 1529 a complete change took place in the policy of the crown. From this time Parliaments meet regularly; their legislative rights are fully recognized; and the autocratic power of the crown rests on a Parliamentary basis. Parliament repaid the royal confidence with a dangerous subservience. Thus, in 1529 and again in 1543 the king was excused by statute from repaying the loans that he had raised, and in 1536 he was granted the power to regulate the succession by royal will. But the most striking example of the complaisance of Parliament was the Act of 1539 (repealed early in the following reign) which gave to royal proclamations, with certain restrictions, the force of law.[1]

How are we to account for this subservience of Parliament to the royal will? No doubt the king's advisers were able to influence the elections, particularly in the boroughs, and the members could also be influenced, directly or indirectly, by the crown. Henry VIII. created only five new boroughs, but his successors used this prerogative of the crown more freely, Edward VI. creating forty-eight

[1] Proclamations made by the king with the advice of a majority of the Council were to have the force of statutes, "but so that they should not be prejudicial to any person's inheritance, offices, liberties, goods and chattels, or infringe the established laws."

new boroughs, Mary twenty-one, and Elizabeth sixty. These boroughs were often in Cornwall, where royal influence was supreme, or in other districts that could be depended on to support the royal authority.

But the Tudor Parliaments were not mere packed assemblies. Henry VIII. was popular with the middle class, whose interests were bound up with the maintenance of law and order. According to Dr. Prothero, "the main reason for the large increase in the number of borough-seats is probably to be found in the growing prosperity of the country, and in the reliance which the Tudors placed on the commercial and industrial classes." This class also strongly approved of the repudiation of papal authority, and saw in the strength of the crown the greatest security against its reassertion. The doctrine of divine right really grew out of the effort to meet the claims of the papacy by a corresponding appeal to a religious sanction. Whatever tended to exalt royal authority tended also to justify the claim of England to be religiously independent.

With the Reformation we can only deal in as far as it affected the constitutional system. The Reformation Parliament met in 1529 and sat till 1536—the first example of a Parliament being prorogued instead of being dissolved at the end of its first session. In a long series of statutes, this Parliament carried through the repudiation of papal authority and the complete subordination of the Church to the crown. Almost all the rights that the Pope had exercised were now transferred to the king, who, as Supreme Head of the Church, now exercised immense powers entirely outside the control of Parliament. The influence of this change was far-reaching. As Henry VII. had brought the nobles into subjection to the crown,

The Reformation

Henry VIII. now brought the ecclesiastical estate into subjection. Never hereafter would a great Church leader be able to defy the power of the crown as Anselm or Hugh of Lincoln or Thomas of London had done. Indeed, there was grave danger that the bishops would become little more than a body of civil servants ruling a department of the state.

With the dissolution of the monasteries, which followed in the years 1536-1539, the mitred abbots disappeared from the House of Lords, where the lay peers now for the first time constituted a majority. As not a few of these had been enriched with the spoils of the monasteries they were little likely to support the Church against the king. The Reformation also brought to an end the long series of ecclesiastical chief ministers of the crown. Gardiner under Mary, and Williams under Charles I., are exceptions that prove the rule. And with the ecclesiastical statesman went the ecclesiastical lawyer. The Church courts continued to exist as mere shadows of their former selves, and the way was left open for the great age of secular lawyers—the age of Nicholas Bacon and his greater son, of Coke, Selden, and the leaders of the Parliamentary party in Stuart times.

It was Thomas Cromwell who taught Henry how to turn the Reformation movement into an instrument of despotism. The weapon needed for the purpose was provided by the extension of the law of treason. The Treason Act of Edward III. had limited treason to seven kinds of overt act, and since then no substantial change had taken place. But Henry now persuaded Parliament, in a series of Acts, of which the Treason Act of 1535 is the most important, to extend treason to cover words spoken—"verbal treason"—and even the refusal to answer incriminating questions. The treason laws played the same part in the reign of

terror that Cromwell established in England between 1536 and 1540 as the Law of Suspects did in the reign of terror of the French Revolution. Both placed the liberty and life of the subject under the unrestricted control of the executive. In all, we have nine fresh Treason Acts during the reign, four dealing with the claims of the king as supreme head of the Church, and five with the succession as affected by the various marriages of the king. These new treasons were swept away at the beginning of the next reign, but Edward VI., Mary, and Elizabeth all created new treasons of a similar character, though none of them used the treason law in as drastic a way as their father had done.

Meanwhile it is interesting to notice that in 1552 the Commons took the first step in remedying the gross injustice with which trials for treason were conducted, by providing that no man should be accused of treason except on the testimony of two witnesses, who should be brought face to face with the accused. The various statutes dealing with treason that have been passed since then have all been designed either to secure for the accused a reasonable chance of defence, or to remove various offences—counterfeiting coinage, riot, etc.—out of the category of treason.

While the development of the treason law placed the life and liberty of his subjects at the mercy of the king, the spoils of the monasteries made him independent of Parliament. An immense sum was acquired from the Church in connexion with the "submission of the clergy," and a very much larger amount, in moveables and land, passed into the hands of the king when the monasteries were dissolved in 1536 and 1539. Members of Parliament were willing to sanction the appropriation by the king of revenues that their constituents were not asked to

Monastic lands.

supply. A good deal of this wealth the king retained for himself; most of the rest he used to endow a "new nobility," whose dependence on royal grants of monastic lands insured their loyalty to the crown and their enthusiasm for the Reformation. It is a significant fact that before Queen Mary could carry through her policy of reconciliation with the Pope, she was obliged to guarantee the holders of Church lands in the undisturbed possession of their property.

The fall of Cromwell in 1540 was as dramatic an event as the fall of Wolsey had been. He had taught Henry how to use Acts of Attainder where ordinary judicial process failed; and the weapon that he had forged was used for his destruction. After the death of Cromwell, Henry became more clearly his own chief minister. When the revenues plundered from the Church proved insufficient for his needs, he avoided appeals to Parliament by the disastrous expedient of debasing the coinage, thereby plunging English financial arrangements into confusion. Soon after this he died.

The ten years that followed are a blank as far as constitutional events are concerned. The reign of Edward VI. discredited the extreme reforming party by identifying it with a policy of unscrupulous spoliation of Church property; while the reign of Mary discredited the old religion by identifying it with persecution.

Elizabeth, 1558-1603. Elizabeth took up the threads of English policy at the point at which they had been dropped by her father, leaving the last two reigns, as far as possible, to cancel each other. In her reign the Tudor monarchy reached its zenith. For most of the conditions that made a strong monarchy necessary under Henry VIII. were more prominently present in the reign of the last of the

Tudors. Elizabeth alone stood between the country and the danger of the succession of Mary Queen of Scots, a devoted adherent of the Counter-Reformation, or of a disputed succession which could only have ended in civil war. In Europe the Roman Church had rallied from the blows that had fallen on it in the Reformation secessions, and was steadily regaining lost ground. This Counter-Reformation was backed by the whole power of Philip of Spain, and Elizabeth's life seemed the only guarantee against the restoration of papal authority in England, by foreign invasion if necessary. This menace of foreign attack, from France or Spain or both, was a new factor in the situation. It served to rally to the support of the crown all the patriotic instincts of the nation. In the reign of Elizabeth the interests of the sovereign and the people were identified to a degree that has seldom happened in history.

The fact that Elizabeth was a queen helped to evoke a feeling of chivalry that showed itself not only in the literary affectations of court writers but also in a very real loyalty of service. And the queen was also fortunate in her ministers. While she coquetted with court gallants like the Earl of Leicester or the Earl of Essex, it was to men like Cecil and Walsingham and Nicholas Bacon that she entrusted the responsible work of government; and right loyally did they serve her.

Elizabethan statesmen.

Under Lord Burghley's administration England was, in the words of Hallam, "managed as if it had been the household and estate of a nobleman under an active and prying steward. It was a main part of his system to keep alive in the English gentry a persuasion that his eye was upon them." This applies particularly to the English Roman Catholics, whom the pope's Bill of Deposition

placed in the cruel position of being obliged to choose between disloyalty to their religion and treason to their sovereign. The vast majority remained loyal subjects of the crown.

The earliest task of the reign was the settlement of the religious question. By the Acts of Supremacy and Uniformity the "ancient jurisdiction" of the crown in matters ecclesiastical was restored, though the title "Supreme Head" was not revived.

The High Commission Court.

The sovereign was given the right to exercise her authority over the Church through commissioners, who, however, are not to be allowed to condemn as heretical anything not so declared by scripture, general councils, or Act of Parliament passed with the consent of Convocation. The queen immediately issued a commission to Parker, Archbishop of Canterbury, and seventeen other commissioners, authorizing them to act as a High Commission Court for the purpose of enforcing these Acts. The Court thus constituted grew in effective activity towards the end of the reign, and became the special instrument through which the queen attempted to force the Puritan clergy to conform.

Elizabeth regarded with peculiar jealousy her prerogative as governor of the Church. She looked on the bishops as state officials through whom the royal authority was exercised, and while defending their right to be consulted on all ecclesiastical legislation, she resented any attempt on their part to act independently. On more than one occasion she declined to allow bills on matters ecclesiastical to be introduced in Parliament. In 1593 the Speaker was instructed to inform the House that "Her Majesty's present charge and express command is that no bills touching matters of state, or reformation in causes ecclesiastical, be

exhibited. And, upon my allegiance, I am commanded, if any such bill be exhibited, not to read it.' One reason for this prohibition was that the Parliaments of the latter part of Elizabeth's reign were strongly Puritan in their sympathies, and the queen was determined to maintain in matters ecclesiastical the middle position between Rome and Geneva that had been established at the beginning of her reign.

During her long reign of forty-five years the queen summoned only ten Parliaments. One of these lasted eleven years (1572-83) but met only three times. On twenty-nine years of the reign there was no session of Parliament at all. Yet the legislative work of the reign was of the greatest importance, especially in regard to social and economic questions. The queen and Parliament.

By careful economy Elizabeth was able to avoid frequent demands for Parliamentary grants. "In the thirty years preceding the Armada, Elizabeth applied for only eight subsidies, and of one of them a portion was remitted. By her economy she not only defrayed the expenses of government out of the ordinary revenue, which, at the end of the reign, was about £300,000 a year, but paid off old debts. . . . She even accumulated a small reserve. . . But this reserve vanished immediately she became involved in the great war with Spain; and during the last fifteen years of her life, although she received twelve subsidies, she was always in difficulty for money."[1] It must be admitted that Parliament was not over-generous in its supplies, and that their devotion to the Virgin Queen did not prevent the country gentlemen from exercising freely the Englishman's prerogative of grumbling at his taxes.

The only department of finance in which any serious

[1] Beesly, *Queen Elizabeth*, pp. 221-222.

Monopolies.

friction arose was in regard to monopolies. Exclusive rights of trading in certain articles, such as salt, vinegar, coal, etc., had been given by the queen to various favourites, and several protests by Parliament against the abuses of the system were made. The discontent culminated in the last year of the reign, when a bill to restrict monopolies was brought forward and debated in the House of Commons. The queen, hearing of what was going forward, sent a gracious message to the House through the Speaker, promising to reform the abuses complained of, "against which her wrath was so incensed," that she neither could nor would suffer such to escape with impunity."

The Speaker.

Throughout Tudor times the Speaker was a nominee of the Court. According to Sir Thomas Smith (*Commonwealth of England*), "the Speaker is commonly appointed by the king or queen, though accepted by the assent of the House." Lenthall, the Speaker of the Long Parliament, was probably the first Speaker over whose appointment the crown exercised no control.

Freedom of speech.

Of the privileges of Parliament, which from 1571 were regularly claimed by the Speaker, that of freedom of speech was least fully recognized. I have already mentioned the queen's refusal to allow debates on ecclesiastical matters. The subject of her marriage was also one on which the House was more than once forbidden to touch. On several occasions members of Parliament were imprisoned for making proposals in Parliament distasteful to the queen. In 1593 the Lord Keeper read the House a lecture on the limits of the privilege of freedom of speech. "Privilege of speech is granted, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter; but your privilege is *aye* or *no*." On the same occasion the queen asserted the royal

prerogative in emphatic terms: "It is in me and in my power to call Parliaments; and it is in my power to end and determine the same; and it is in my power to assent or dissent to anything done in Parliament." While Elizabeth lived, Parliament was willing to condone occasional interference with privilege, and even the punishment of members for words spoken in Parliament. But the debates of the reign show a growing sense of the importance of defending the rights of the House. No other sovereign would be permitted to do what the old and honoured queen might do with impunity. It was the failure of James I. to recognize this fact that led him to his earliest collisions with Parliament.

In local life, the most marked feature of the Tudor period is the rise of the justice of the peace, of whose work we shall have more to say in a later chapter. Beginning under Edward I. as a *custos* or *conservator pacis*, he gradually grew in importance during the century that followed, and took over almost all the judicial powers of the Shire-Court. Indeed, Quarter-Sessions began to encroach on the jurisdiction of the itinerant justices. Under the Tudors Quarter-Sessions became the centre of administrative as well as judicial work. The sheriff became subordinate to the bench of justices of the peace, which also became the medium of communication between the central government and the county. The work of the justices of the peace included the enforcement of the recusant laws, the regulation of wages and prices, the administration of the apprenticeship system, the management of prisons, roads, and bridges —and, indeed, the whole work of local administration. "Generally, for the good government of the shire, the prince putteth his trust in them."

The justice of the peace.

Under the Tudors the justices of the peace were ap-

pointed by the Chancellor. Under Mary the command of the county militia was transferred from the sheriff to a new officer, the Lord-Lieutenant, who gradually acquired the right to nominate the justice of the peace for the county. By an Act of 1440 every justice must have land or tenements of the annual value of £20. In the fourteenth century the justices were paid wages of four shillings a day. But as the crown encouraged the appointment of men of substance, who were less likely to use the office for purposes of personal advantage, this payment gradually dropped.

The development of the office of justice of the peace led to the supremacy of the landed gentry in English local administration. It also imposed a definite barrier against royal despotism. For while the justice of the peace owed his appointment to the crown, his interests were identified with the locality that he administered. Richelieu laid the foundations of autocracy in France by taking the local administration out of the hands of the territorial magnates and placing it in the hands of *intendants* sent down from the central government. If the Tudors had created a similar bureaucratic system, the country gentry would never have had the training in the work of administration that fitted them to be the leaders in the struggle with the Stuart kings. The same class that, as knights of the shire, had led the developments of Parliament in the fourteenth century, now accepted the burdens of local administration. A century later the English shire members are again leading the advance of Parliamentary government.

CHAPTER X

THE STUART THEORY OF KINGSHIP

THE constitutional history of the seventeenth century turns around the question of "ultimate sovereignty." Who had the right to say the last word on questions of national policy? Or, to put the same question in another way, Was Parliament the exclusive, or only the normal, channel through which sovereign power could flow? That the legislative power of the crown should be exercised through the channel of Parliament was by this time a clearly recognized principle of the Constitution. But the executive authority of the crown was largely outside the control of Parliament. It was only through its financial powers that the House of Commons could exercise any effective influence over royal policy. Accordingly, the controversies of the time turn largely on financial questions. If the sovereign could secure an adequate revenue without the need of Parliamentary taxation he might hope to be able to establish a practical despotism. From the first, Parliament was fully alive to this danger, and clung tenaciously to its control over supplies.

Under the Tudors, a popular despotism had been established while the forms of the Constitution had been respected. With the beginning of the seventeenth century **Changed conditions.**

the special causes that had made this possible gradually ceased to operate. The danger of a Romanist reaction in England had passed, and the Roman Church in England only asked now for a toleration that the Stuart kings would have been glad to give if they had been able. Where the statesmen of Elizabeth feared a Papist rebellion, the statesmen of the Stuart period only feared a Papist plot, and even this fear vanished with the disappearance of the discredited adventurer Titus Oates. Again, the rise of the independent state of Holland, and the adoption by France of a policy of toleration at home, and of Protestant alliances abroad, relieved England of all danger of foreign invasion, while the personal union with Scotland guaranteed England from a flank attack from across the borders.

Moreover, the Tudor period had consolidated the powers of Parliament over legislation and taxation. Within their own sphere, the Parliaments of Henry VIII. and Elizabeth were as jealous of their rights as the Stuart Parliaments of the seventeenth century. They had been content to leave the actual work of government in the hands of the crown, because the policy of the crown was, on the whole, a policy that they approved.

Rise of middle class.

The Tudor period had depressed the old noble families, but it had given a new importance to the gentry and commercial classes. The growth of trade, and the agricultural changes connected with the enclosure of common fields, tended to increase their wealth, while the religious controversies of the time developed a certain alacrity of mind that soon came to affect politics as well as religion.

The process by which the executive powers of the crown passed under the control of Parliament was bound to involve much friction and difficulty. But this was greatly increased by two things. The first of these was the religious

controversy, and the other, closely connected with it, was the theory of divine right developed by the legal and ecclesiastical supporters of the crown.

Puritanism had gradually risen to political importance during the reign of Elizabeth, and was especially strong among the commercial classes whose opinions were represented in the House of Commons. As the breach between the Puritan party and the official leaders of the English Church widened, the Church began to move in the opposite direction, and the "High Church" reaction that began with Andrewes, and reached its height under Laud, was a direct challenge to Puritanism. *Puritanism and the Church.*

From the very beginning of his reign James I. showed himself determined to support the official policy of the Church. This "working alliance" between the Stuarts and the Church leaders was ultimately disastrous to both. It entangled the Church in political associations from which she has never been able to shake herself free; and it alienated from the crown a large class to whom the "High Church" position seemed little better than disguised Romanism. Strongly as the Stuart Parliaments felt on the question of taxation, they felt much more strongly on what they regarded as the Romeward drift of the national religion.

The Stuart theory of divine right was the outcome of the Reformation movement. In their effort to repudiate papal claims the reformers of Europe had asserted the religious character of secular authority. When the pope deposed Elizabeth and absolved her subjects from their allegiance, English patriotic feeling replied by asserting the duty of obedience as resting on the divine right of the queen. While Mary Queen of Scots lived, the doctrine of hereditary right could not be *Divine right.*

openly asserted; but after her death it became part of the theory that hereditary succession was divinely appointed. The undisputed succession of James I. in spite of two Acts of Parliament barring his claims, was a triumph for the hereditary idea. Parliamentary recognition of the Stuart succession took the form of a declaratory Act, which asserted that "the king holdeth the kingdom of England by birthright inherent, by descent from the blood royal, whereupon succession doth attend."

James I., 1603-1625.

Not content with the substance of power that his predecessors had enjoyed, James asserted a theory of kingship that placed the king in an impregnable position of authority. Even before his accession to the English crown he had asserted, in the *True Law of Free Monarchies*, the supremacy of the sovereign over the law. "A good king, though he be above the law, will subject and frame his actions thereto, for example's sake, to his subjects, and of his own free will, but not as subject or bound thereto." And in a speech in the Star Chamber, in 1616, he said: "It is atheism and blasphemy to dispute what God can do; good Christians content themselves with His will revealed in His word; so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that; but rest in that which is the king's revealed will in his law." In this assertion of royal autocracy, the king was supported by the ecclesiastical and legal authorities. The leaders of the "High Church" party taught the doctrine of passive obedience. "All the significations of a royal pleasure are, or ought to be, to all loyal subjects, in the nature and force of a command. Nay, though any king in the world should command flatly contrary against the law of God, yet were his power no otherwise to be resisted but . . . to endure with patience whatever penalty his

"Passive obedience."

pleasure should inflict upon them." No circumstances could justify resistance to the authority of a king, who was responsible only to God.

The judges and the Constitution.

The judges vied with the ecclesiastics in exalting the personal authority of the crown. The Stuart period is the great period of "cases." The English law courts played the same part at this time as the High Court of the United States now plays as the guardian and interpreter of the Constitution. But the English Constitution was founded, not upon law, but upon conventions that had grown up gradually. In strict law the decisions of the Stuart judges were probably right, but strict law was not properly applicable to a system of government based on unwritten understandings. While Coke remained Lord Chief Justice, his great reverence for Common Law prevented him from acceding to the Stuart doctrine of royal supremacy, but after his dismissal in 1616 the judicial decisions in constitutional cases justified Bacon's description of the judges as "lions under the throne." Even before this, the judges had decided, in Calvin's case, that allegiance was given to the sovereign personally, and that the mere fact that James was king in Scotland and in England made every Scotsman an English subject; and in Bates's case, that no king may bind his successors in any matter affecting his rights of sovereignty. But Coke declined to admit that the king had the right to sit personally to judge cases or to create fresh offences by proclamation, and in the case of Commendams, he openly resisted the attempt of the king to interfere with the business of the courts.

Edward Coke.

The importance of the judicial decisions of this period depends not so much on the immediate issue as on the definitions of the royal prerogative by which the judges

justified their verdicts. For example, in Bates's case it was laid down that "the king's power is twofold, ordinary and absolute. His ordinary power is for the profit of particular subjects, for the execution of civil justice in the ordinary courts. The king's absolute power, on the contrary, is applied, not for the benefit of particular persons, but for the general benefit of the people, and is *salus populi.*" Again, in the Ship Money case it was asserted that "the king *pro bono publico* may charge his subjects for the safety and defence of the kingdom, notwithstanding any Act of Parliament, and a statute derogatory from the prerogative doth not bind the king, and the king may dispense with any law in cases of necessity."

Holding such views as these, the judges could not afford to the subject any adequate protection against the executive. Arbitrary imprisonment became possible as soon as it was decided that "by special command of the king" was a sufficient answer to a writ of Habeas Corpus. But beside the ordinary courts, the executive possessed a dangerous weapon in the Court of Star Chamber, which, under the early Stuarts, became an instrument for enforcing the authority of the executive outside, and often in violation of, ordinary law.

National religion and foreign affairs.

From the first, Parliament recognized the serious character of the issues at stake. But while James lived the crown retained a considerable part of the popularity that it had enjoyed in the great days of his predecessor. The only directions in which serious contest arose were in regard to the control of national religion, in which Parliament asserted its right to share; and in regard to foreign policy, in which Parliament wished the king to support more energetically the Protestant cause in Europe (while showing great reluctance to provide funds to enable

him to do so), and regarded with strong disfavour James's projects for alliance with Spain. Charles I. was a better man than his father, but he was obstinate when it would have been wise to yield, and irresolute when it was essential to be firm. Even his strong and sincere religious convictions ministered to his undoing. In the early part of his reign he was misled by the blundering statesmanship of Buckingham, and when the supremely able guidance of Wentworth, Lord Strafford, seemed destined to place him in a position of assured supremacy, the ecclesiastical disturbances in Scotland led to the outbreak of the Bishops' War, and so made it necessary for Charles, at all costs, to propitiate the Parliament that alone could supply him with funds for repressing his rebellious subjects.

The Restoration brought back the doctrine of divine right, indefeasible hereditary succession and non-resistance. But the foundation on which the doctrine rested had been shaken by the events of the previous period, and the two political philosophers who championed the monarchy in the Restoration period tried to find a new ground of defence. Filmer, whose *Patriarcha* was published in 1681, though written a good many years earlier, finds the foundation for the claims of the monarchy in the primitive rights of the father over his family; while Hobbes, in his *Leviathan*, boldly endeavours to build up a theory of absolute monarchy on a democratic basis. According to his theory, the authority of the sovereign is derived from an original contract, by which the members of the primitive community join together to appoint a king to "bear their persons."

The Restoration period.

Filmer.

Hobbes.

But the idea that the body politic is founded on an original contract goes back to Hooker and Milton, and was developed by the Whig political thinkers of the Restoration period, as an argument for a constitutional monarchy

Locke.

resting on the will of the people, till in Locke's *Treatises on Government* it provides a justification for the Revolution that brought to a final end the Stuart theory of divine right.

Ministerial responsibility.

It was only gradually that the Parliamentary leaders in the struggle against autocracy saw clearly that the true remedy lay not so much in restricting the power of the executive as in securing the responsibility of the ministers of the crown to Parliament. The Restoration period, in the threatened impeachment of Clarendon, and the actual impeachment of Danby, asserted the principle that a minister must accept full responsibility for the advice that he gives to the crown. But the recognition of royal irresponsibility—the logical outcome of ministerial responsibility—belongs to a later period of national history, and can hardly be said to be complete till the early part of the nineteenth century.

This preliminary survey of the Stuart period may help to guide us through the rather tangled story that we have to tell in the chapters that follow.

CHAPTER XI.

PARLIAMENT AND THE PREROGATIVE

BLACKSTONE, who had in view the conditions of the seventeenth century, defined the word "prerogative" as meaning "a special pre-eminence which the king hath, over and above all other persons and out of the course of the Common Law, in right of his royal dignity." Dicey, who has in view the conditions of the nineteenth, defines the prerogative as "the discretionary authority of the executive." There is, and always must be, a large amount of power vested in the executive, over which Parliament has no direct control. At the beginning of the seventeenth century this power was vested in the king; soon after the end of the century it was vested in ministers responsible to Parliament. It is this change that we have to consider in this and the following chapters.

Though the accession of James I. involved no break in the continuity of our national history, the atmosphere of political life began gradually to change. While Robert Cecil remained the chief minister of the crown, the traditions of the Elizabethan period were preserved. After his death in 1612 meaner and less scrupulous advisers directed the royal policy, and sowed the seeds of distrust and ill-feeling between the throne and the people. James I., 1603-1625.

The religious question.

No one knew for certain what views James held on the religious question, but the Puritan party cherished hopes that his Presbyterian associations might lead him to sympathize with their programme of reforms. A petition claiming to represent the views of a thousand Puritan clergy —the so-called Millonary Petition—was presented to the king on his way south, and in the following year the Hampton Court Conference was called to consider the proposals that it contained. The king presided, and showed unmistakably on which side his sympathies lay. "If you aim at a Scottish Presbytery," he told the Puritan representatives, "it agreeth as well with a monarchy as God and the devil." "If this be all your party hath to say," were his closing words, "I will make them conform themselves, or else will harry them out of the land." This royal declaration of war on Puritanism is the key to the whole contest that followed. It gave a political character to what was primarily a religious movement, and involved the crown and the Puritan party in a struggle destined in the end to prove fatal to both. Within the same year three hundred of the clergy were ejected from their cures for refusing to assent to the Prayer Book.

The same year witnessed the beginning of the long debate between King and Parliament. In opening his first Parliament James laid down what he conceived to be the true doctrine of monarchy. This involved the claim that the House of Commons "derived all matters of privilege from him."

The Apology of 1604.

The House of Commons replied to this challenge in an Apology which is one of the most important constitutional documents of the period. "To understand this Apology is to understand the causes of the success of the English Revolution," says Dr. Gardiner. After declaring that the

king had been "greatly wronged by misinformation," the House proceeds to claim as three inalienable rights of the Commons of England (1) the right to free election of representatives; (2) the right of persons so elected to freedom from restraint, arrest, or imprisonment; (3) that in Parliament they may speak their consciences freely without check or controlment. After dealing with these matters, the Apology goes on to assert that "your Majesty should be misinformed, if any man should deliver that the kings of England have any power in themselves either to alter religion . . . or to make any laws concerning the same, otherwise than as in temporal causes by consent of Parliament." The Apology closes with a respectful appeal to the king to trust and work with Parliament.

The Commons thus took their stand, at the outset, on precedent. It was, according to their contention, the king who was introducing innovations on the ancient usage of the realm. And throughout the whole period that followed they maintained this attitude. To royal precedents from Tudor times they opposed precedents from the fourteenth century. It was not on philosophical but on historical and legal ground that the Commons rested their claims. They did not ask for the "Rights of Man," but for the historic rights of Englishmen.

Financial questions.

One of the earliest problems that confronted the royal advisers was that of finance. Elizabeth had, in the last years of her reign, been very poor. With the inflow of silver from the New World, prices had risen, while the resources of the crown had declined. It was only by strict economy that the queen was able to pay her way.

James, with a family to maintain, needed a larger income and he saw in the royal right to regulate trade an opportunity of replenishing the royal coffers. Accordingly,

in 1606 a tariff of duties on various articles of import was issued.[1] It is very difficult to say how far this came within the rights of the crown; precedents could be quoted on both sides. But the decision lay in the hands of the judges, and the case of a Turkey merchant named Bates, who refused to pay a duty on currants, was made a test case. The decision of the Court of Exchequer was in favour of the crown. Two years later a Book of Rates was issued, levying duties on almost every article of merchandise. This roused the Commons to a sense of the gravity of the question, and in 1610, and again in the "Addled" Parliament of 1614, resolutions were carried denying the right of the king to levy such impositions without the consent of Parliament.

Bates's case, 1606.

The Parliament of 1610 is notable for the last effort to settle the revenue question by friendly agreement. By the "Great Contract" the crown was to surrender the feudal dues in return for a guaranteed revenue of £200,000. At first, negotiations went on hopefully, but religious controversies supervened, and in the end Parliament was dissolved, leaving the question unsettled.

Edward Coke.

After this James ruled for ten years without Parliament, excepting the short Parliament of 1614. During this period the centre of interest shifts to the law courts, where Coke becomes the chief leader of resistance to royal claims. Edward Coke, probably the most learned lawyer of his time, had been Attorney-General under Elizabeth, and in 1606 became Chief Justice of Common Pleas. Four years later he was consulted by the king as to the legal validity of royal Proclamations, against the increase of which the Commons had protested. In reply, Coke and his fellow-judges laid down the three principles that have ever since governed the right of proclamation:

(1) that the king cannot create any new offence by proclamation; (2) but that neglect of a proclamation calling attention to an existing law aggravates the offence; (3) that an offence cannot be made punishable in the Star Chamber by proclamation.

In 1613 Coke was made Chief Justice of the King's Bench, in the hope that he might prove more amenable to the royal wishes. But almost immediately after his promotion he protested, in Peacham's case, against the action of the king in consulting each of the judges separately about a case that they were to judge together. In 1616 the final breach came in the case of Commendams —a case which involved the right of the Crown to allow benefices in the Church to be held *in commendam*, that is, with other preferment. The details of the case are unimportant; what makes it important is that the king requested the judges to postpone their verdict till he could discuss the matter with them. Coke stoutly refused, and subsequently argued the question, on his knees, in the royal presence. He was forthwith dismissed, and from 1620 to 1634 appears as one of the leaders of the Parliamentary party opposed to the royal claims.

Case of "Commendams," 1616.

The dismissal of Coke, who was disliked for his exceedingly unpleasing personal character more even than he was admired for his great ability, was a public warning to the judges that their tenure of office was "during the king's pleasure." In the following year, Bacon, Coke's lifelong rival, become Lord Chancellor.

Parliament of 1621.

In 1621 the condition of foreign affairs, and his own impoverished exchequer, obliged James to summon Parliament. The Parliament of 1621 is notable for two things. It attacked monopolies with vigour, and so paved the way for their abolition three years later; and it

revived the old weapon of impeachment. Having impeached two knights, Mompesson and Mitchell, for abuses of monopolies, it proceeded, under Coke's instigation, to attack Lord Chancellor Bacon for receiving bribes in the administration of justice. No evidence was adduced to prove that Bacon's decisions had ever been affected by the presents that, in accordance with the custom of the day, he had received from suitors at his court, but he was condemned to the loss of office and a ruinous fine, and drops out of public life. He is one of the most remarkable examples in history of supreme intellectual power united to meanness of moral nature.

A quarrel with the king on the question of freedom of speech brought the Parliament of 1621 to an end. In debates on foreign affairs the House urged intervention on the Protestant side in the Thirty Years' War, which had now broken out in Germany. James, who was anxious to keep on friendly terms with Spain, ordered the Commons, as Elizabeth had more than once done before, not to discuss foreign affairs. The Commons replied by entering in their minutes a formal assertion of their right to discuss all questions. James sent for the journals of the House, tore out the protest, and dissolved Parliament.

Parliament of 1624. Three years later the last Parliament of the reign met. James had now abandoned his Spanish policy and was in accord with Parliament on foreign affairs. He was also in declining health, and willing to make concessions for the sake of peace. The most important event of the session was the passing of an Act making all monopolies illegal. Early in the following year James died, and with him died the last traditions of the Tudor times. Four years of the rule of Buckingham sufficed to turn the relations between the crown and Parliament from one of friendliness tempered

by occasional irritation to one of deep-seated and permanent hostility.

New England.

Before the death of James I. two events had happened in the New World out of which great constitutional results were destined to grow. The first was the assembling, in 1619, of the first representative assembly of the colony of Virginia, and the passing of Virginia in 1624 from the Company to the direct control of the crown. The second was the landing of one hundred and twenty English emigrants, who had crossed from Southampton in the *Mayflower*, at Cape Cod, where they drew up a solemn compact of government, "covenanting and combining themselves into a civil body politic." It is not too much to say that that meeting at Cape Cod was the birthday of modern democracy. The Independents had already adopted a completely democratic system of Church government, and it seemed natural that they should extend the same system to civil life.

Charles I., 1625-1649.

The reign of Charles I. opened with two untoward events. The first of these was the destruction of an army —if a rabble of twelve thousand "poor rascals" without equipment, experience, or enthusiasm can be dignified with the name -sent out under the command of Mansfeld to help the Protestant cause in Germany. The failure brought home to Parliament the incompetence of Buckingham, who had persuaded Charles to send out the expedition without summoning Parliament to vote the supplies necessary for equipping an adequate force. The second was the marriage of Charles to Henrietta Maria of France, a marriage which proved fatal to the dynasty in two ways. Charles's affection for his wife led him into some of the worst mistakes of his reign, and half a century later Charles II. alienated the support of a large section of the English

people by the strong French bias of his foreign policy. The marriage relations of Tudors and Hapsburgs might, but for the shrewdness of Elizabeth, have proved fatal to English independence; the marriage relations of the Stuarts and the Bourbons helped greatly to bring in Cromwell as Lord Protector and William III. as king.

Influenced by these events, the first Parliament of the reign deeply offended the king by refusing to vote to him for life the taxes usually voted at the beginning of each reign. He made an attack on Buckingham an excuse for dissolving Parliament in less than two months from the time of its meeting. Six months later, when the folly of Buckingham had added a quarrel with France to the existing quarrel with Spain, the second Parliament met. Charles tried to secure a subservient assembly by appointing as sheriffs some of the chief leaders of the opposition of the previous Parliament, and so disqualifying them from being elected. But a new and nobler leader appeared in Sir John Eliot, who boldly moved the impeachment of Buckingham, a step to which Charles replied by dissolving his second Parliament as he had dissolved his first.

For a year Charles struggled on, raising supplies by a forced loan, for refusing which eighty gentlemen were imprisoned, and feeding his starving recruits by billeting them on the people. The failure of these efforts compelled him, in 1628, to call the third Parliament of the reign. This Parliament met in a new spirit and under new leaders. Wentworth, Pym, Hampden, and Eliot represented the old knights of the shire who had led the advance of Parliamentary institutions in Lancastrian times. Their political instincts were conservative rather than revolutionary; they had all received some legal training; and they believed that they were defending the ancient institutions of the

country against novel claims to despotic authority put forward by a Government that had shown itself as inefficient in action as it had been autocratic in theory

The first work of the new Parliament was the drawing up of the Petition of Right, a document asserting the illegality of billeting, martial law, arbitrary taxation, and arbitrary imprisonment. The House of Lords, divided between subservience to court influences and hatred of the upstart Buckingham, passed the Petition, to which the king gave his assent, five subsidies being voted as the price of the concession. Within two months Buckingham was murdered at Portsmouth by a mad ex-lieutenant, whose exploit the people welcomed with an outbreak of joy that Charles never forgave. The affection that he had given to the friend of his youth he now gave to his wife.

The religious question.

The second session of Parliament brought to the front another great cause of contest between the Commons and the crown. The "High Church" party found Charles a much more whole-hearted ally than his father had been. Under the leadership of Laud, who now came to the front as the chief spiritual adviser of the king, a definite attack on Puritanism began. Theologically, the attack took the form of repudiation of Calvinistic dogma in favour of the "Arminian" doctrine of freewill; administratively, the work of Laud was the enforcement of uniformity of practice on the clergy, by the exercise of royal authority through the Court of High Commission and the Star Chamber. Laud claimed to dictate the ecclesiastical policy of the nation, and the Puritan party in Parliament met the claim by putting forward a corresponding claim on their own behalf. The struggle was not, as yet, a struggle for toleration, but for the control of national religion. That different types of religion could be allowed to exist side by side was an idea

alien from the conceptions of the period. Political toleration only came fifty years later, when both sides had found it impossible to secure a monopoly for their own ecclesiastical opinions; religious toleration has come much more slowly, and is still very incomplete.

Beside the growing religious antagonism between the crown and Parliament, another controversy arose with regard to the meaning of the clause in the Petition of Right prohibiting arbitrary taxation. Did it include the old customs duties—tonnage and poundage—which had generally been voted by Parliament to the king for life, and which Charles at the beginning of his reign had refused to accept for one year only?

Eliot's three resolutions, 1629.

As soon as Parliament reassembled Sir John Eliot brought forward three resolutions, declaring that (1) all who should bring in innovations in religion, or extend or introduce Popery or Arminianism; (2) all who should advise the levying of tonnage and poundage, not being granted by Parliament; and (3) all who should pay tonnage and poundage, so levied, should be accounted capital enemies of the kingdom. The king heard of what was in progress, and ordered the Speaker to adjourn the House, but he was held in his chair by some of the Parliamentary leaders, while the three resolutions were carried in a scene of tumult and passion that might have warned a sovereign less obstinate than Charles that the limit of constitutional action was nearly reached.

Nine members of Parliament were imprisoned by the king for their share in these proceedings, and the noblest of them all, Sir John Eliot, died in prison three years later, refusing to the end to admit the right of the law courts to take cognizance of the proceedings of the House of Commons.

For eleven years Charles governed without a Parliament. By withdrawing from European affairs, leaving the championship of the Protestant cause to Gustavus Adolphus of Sweden, and, after his death, to France, he was able to avoid military expenses; while the revival of various ancient forms of taxation secured for him a revenue sufficient for the bare necessities of government. Of these various sources of revenue, one is of special importance on account of the controversy to which it gave rise. The dangerous state of the channel, infested with pirates, obliged the king to undertake a reform of the navy, and for this purpose he revived an old custom by levying contributions from the maritime towns for the supply of ships. In the following year (1635) he extended the levy to inland towns as well, on the ground that the maintenance of the navy was the concern of the whole kingdom. The refusal of John Hampden to pay the levy brought the question of the legality of ship-money before the Exchequer Court, and by a majority of seven to five the judges decided for the king. But the case, and still more the strong support given by some of the judges to the most absolute ideas of the royal prerogative, did much to educate the nation in the realization of the true character of the issue that was at stake.

Ship-money case, 1637.

During these years Charles had few able advisers, but he won several recruits from the Parliamentary party, of whom the most important was Thomas Wentworth, who had been one of the leaders of the Parliament of 1628. His motives in abandoning the Parliamentary cause have been a perplexity to all the historians of the period. Whatever they may have been, he threw himself wholeheartedly into the service of the king, and was sent to Ireland, where in a few years he brought order out of the

Thomas Wentworth, Lord Strafford.

chaos and confusion that he found there on his arrival. Wentworth was the most dangerous enemy of the Parliamentary cause, because he recognized that the policy of autocracy, if adopted at all, must be "thorough" and uncompromising, and must rest on a foundation of force. Wentworth's ideal was the popular despotism of the Tudors, which depended less on the support of Parliament than on the general trust and loyalty of the people. If Charles had trusted Wentworth more fully, and not left him in Ireland till the situation in England had become hopelessly entangled, the history of the critical years that followed might have been other than it was.

At the beginning of 1638 there seemed no reason why the "eleven years' tyranny" should not last almost indefinitely. But it could only last while Charles was able to avoid any entanglements involving additional expense. As soon as a quarrel with the Scottish people about ecclesiastical affairs brought a Scottish army into the field in open hostility, the king was obliged to fall back on the detested expedient of a Parliament. He summoned Wentworth (whom he created Earl of Strafford) from Ireland to advise him, and in 1640 called the "Short Parliament." The dissolution of this Parliament only three weeks after its meeting seems to have been due to an exaggerated idea that the king had formed of the hostile intentions of its members. Left without supplies to meet the emergency, Charles apparently listened to Strafford's proposals for bringing over the Irish army. But events moved too fast. The Scottish army marched into Northumberland, with the scarcely concealed approval of a large section of the English people, and in October Charles was obliged to assent to the Treaty of Ripon, by which he agreed to pay the Scots a large indemnity.

The "Short Parliament," 1640.

There was no alternative now but another Parliament, and accordingly writs were issued for the election of the assembly that was destined to pass through a more chequered career than any other Parliament in our history, and to be known in after-times as the Long Parliament. For the first time in the history of Parliamentary elections an electioneering campaign was organized, Pym and Hampden riding round the English towns to urge the electors to choose men loyal to the cause of Parliament.

The Long Parliament 1640-1660.

When Parliament met, Charles summoned Strafford from the north to London, under promise of royal protection. But Strafford knew that he had incurred the implacable hostility of the Parliamentary leaders, and advised the king to take the bold course of arresting them on the charge of conspiracy with the Scottish rebels. While the king hesitated, news of the suggestion reached Pym and his friends, and without a moment's delay they carried to the Upper House an impeachment of Strafford, who was at once arrested and lodged in the Tower. It was an act of war, and the impotence of the Court under this crushing blow showed clearly that the whole fabric of royal despotism was built on the sand. Laud soon followed Strafford to the Tower, while Windebank, Finch, and other supporters of the royal cause only saved themselves by flight.

Trial of Strafford.

In April 1641 Strafford was brought to trial in Westminster Hall. He defended himself with consummate ability, and as the trial proceeded it became clear that no legal case for his condemnation could be made out. The Commons then abandoned the impeachment, but as he was too dangerous an enemy to be allowed to escape, a Bill of Attainder was passed by the Commons, and the discovery of a plot, hatched by the queen and a few hot-

headed courtiers, to bring the northern army to London, led the Lords to acquiesce in his doom. The king, besieged by a raging mob in his palace at Whitehall, at length gave his assent to the bill, and three days later Strafford died on Tower Hill. Probably Charles was right in thinking that nothing he did could save the man whose only crime was that he had served the cause of the king too well. In rousing the mob of London to coerce the king, the Parliamentary leaders had taken a long step forward towards that appeal to mere force that was destined in the end to destroy Puritanism as a political influence.

End of Stuart autocracy.

While Strafford's trial was going on, and in the months that followed, the Commons, now conscious of their power, were engaged in sweeping away the whole Stuart system of government. The Star Chamber and the High Commission Court were abolished, various unparliamentary sources of revenue were declared illegal, and the king was compelled to promise that the judges should in future hold office "during good behaviour." An Act was passed providing that there should not be more than three years' interval between two Parliaments, and in the panic caused by the army plot the Commons forced on the king a bill providing that the present Parliament should not be dissolved without its own consent. All these measures were passed by the Commons practically without opposition. As yet there was no king's party, though the debates on the proposal of a more extreme section for the "root and branch" extirpation of episcopacy showed that the religious question, when it arose, would be likely to put an end to this unanimity of feeling.

The Irish Rebellion.

In the summer of 1641 Charles went to Scotland, where he became involved in a rather obscure plot for the arrest of Argyll and Hamilton. In the autumn of the same

year, just before Parliament reassembled, the Irish Rebellion broke out in Ulster, whence it spread to Munster. This outbreak introduced a new complication into the constitutional situation, for if the Irish Rebellion was to be put down an army was needed for the purpose. But if the Commons gave the king the resources for raising an army, what guarantee was there that he would not use the army so provided to put down opposition at home?

The Grand Remonstrance.

The session of Parliament opened with the Grand Remonstrance—an address giving a detailed account of the work of the previous session, and suggestions for further reforms, including Pym's proposal that the ministers of the crown should be "such as the Parliament may have cause to confide in." The Remonstrance also included proposals for drastic changes in the Church. Over this Remonstrance the unanimity of the Commons broke down. The debates were carried on with a fierce energy that threatened to end in actual bloodshed—"we were like," says one narrator, "to have sheathed our swords in each other's bowels"—and when the Remonstrance was carried by a majority of eleven, a Royalist party had come into existence under the leadership of Lord Falkland and Hyde. Falkland was led to dissociate himself from Pym and his followers, partly by the feeling that, now that the abuses of the previous period were swept away, loyalty obliged Parliament to trust the king and stand by him, and partly by his resolute determination to resist the attempt of Parliament to remodel the national religion. The new party was a "Church and King" party, and the war that followed was fought at least as much on religious as on political questions.

The rest of the work of the Long Parliament was the work of a determined majority. A bill was introduced

The attempt to seize the five members.

excluding the Bishops from the House of Lords, and this was the last bill to which Charles gave his assent, in January 1642. Meanwhile, outside the House, skirmishes took place between the king's personal retainers and the citizens of London, whose close-cropped heads earned for them the nickname of "Roundheads." Alarmed by these disturbances, the House of Commons demanded the right to maintain an armed force for its defence. The king promised his protection, but on the 3rd of January he suddenly took the disastrous step of instructing his Attorney-General to impeach five of the chief Parliamentary leaders. An impeachment by the king was unconstitutional; and an impeachment at that moment meant nothing less than war. The five members promptly took refuge in the City, where Puritanism reigned supreme; and when, on the following day, Charles committed the greatest blunder of his life by entering the House personally to arrest them, he found that "the birds had flown." The effect of this ill-judged step was instantaneous. "The train-bands of London were called out on a war footing. Four thousand armed squires and freeholders, from the Thames valley and the wooded hills of Buckinghamshire, rode in to protect their Hampden. The mariners of the Royal Navy marched up to the Guild Hall, where the Commons sat in committee, cheering for the sailor Earl of Warwick, and offering the king's stores to defend the Parliament."[1] On the 10th Charles withdrew to Hampton Court, while the five members returned in triumph to Westminster. The Commons then introduced the Army Bill, giving them the nomination of the officers of the Militia. The queen crossed to Holland, where her daughter was to be married to the Prince of Orange, to

[1] Trevelyan, *England under the Stuarts*, p. 223.

Outbreak of war.

purchase arms and stores. In April the king moved northward, and after the gates of Hull had been shut against him, fixed his headquarters at York, where sixty members of the House of Commons, led by Falkland, Hyde, and Colepeper, joined him in May. In June the Commons propounded their final demands in the "Nineteen Proposals," and on 22nd August the royal standard was set up at Nottingham. The constitutional issue was to be settled by the arbitrament of the sword.

CHAPTER XII

THE ERA OF CONSTITUTIONAL EXPERIMENT

Two wars, with a short interval of fruitless negotiations between, fill up the six years from August 1642 to the defeat of the Scottish army at Preston in August 1648.

Parliament and the army.

In the course of the first war power gradually passed from Parliament, which was strongly Presbyterian in its sympathies, to the army, which Fairfax and Cromwell had shaped into a tremendously efficient weapon. It had all the fighting power that a Calvinistic creed was able to supply, and its war-cry of "freedom of worship" involved an entirely different ideal of national religion from that of the Parliament. It seethed with strange political theories, and was resolutely determined not to allow Parliament, by any weak concessions, to barter away the "good cause." When the war ended in April 1646, the Parliamentary leaders, who had lost their wisest counsellor by the death of Pym two years before, attempted to open negotiations with the king, while taking steps to disband the army. The reply of the army was to seize the person of the king and march on London. While the outcome of the contest was still in suspense the Scottish invasion relighted the torch of war. When the battle of Preston had shattered the Scottish forces, the army solemnly resolved "to bring

Charles Stuart to justice." Then news arrived that Parliament was actually negotiating a treaty with the king, and the army officers sent Colonel Pride with an armed force to Westminster. "Pride's Purge" expelled about a hundred members, and arrested nearly fifty more, leaving the "Rump" of less than a hundred members to represent the "Commons of England." A commission of one hundred and fifty was nominated to act as a High Court for the trial of the king, and when the Lords refused their consent the Rump resolved "that the people are, under God, the original of all just power; that the Commons of England, in Parliament assembled, being chosen by and representing the people, have the supreme power in this nation; that whatsoever is enacted or declared for law by the Commons in Parliament assembled, hath the force of law, and all the people of this nation are concluded thereby; although the consent of the King or House of Peers be not had thereunto." A few weeks later the Commons resolved that the House of Lords was "useless, dangerous, and ought to be abolished." "Pride's Purge."

Of the hundred and fifty judges appointed to try the king only sixty-seven consented to act, and it was only a small minority of the nation that was represented in the verdict that condemned the king to death. Charles refused to recognize the validity of the court, and "the deep damnation of his taking-off" did much to atone in men's minds for the mistakes of his policy. His closing words summarized the whole case against democracy: "For the people, truly I desire their liberty and freedom as much as anybody whatsoever; but I must tell you, their liberty and freedom consists in having government, those laws by which their lives and goods may be most their own. It is not their having a share in the government; that is nothing Death of the king.

appertaining to them. A subject and a sovereign are clear different things."

Eleven years separate the execution of Charles I. from the restoration of his son and successor. They are years of peculiar interest to the student of the Constitution. Now, for the first and last time in our history, England was free to shape a system of government for herself unhampered by traditions. But after ten years of complete failure in the task of constructing fresh political institutions, the nation deliberately returned to the institutions that had been discarded.

End of the Rump, April 1653.

For three years England was governed by the Rump of the Long Parliament, the officers of the army, and Council of State composed of members of Parliament and army officers, with Cromwell and Vane as its leading members. But when Cromwell had defeated the Scottish attack, and stamped out the Irish rebellion in blood, the Rump demanded the disbandment of the army, while the army demanded the dissolution of Parliament and a free election. Cromwell threw in his lot with the army, and in April 1653 drove out the members of Parliament from the House, carried off the mace, and locked the doors. England passed under a military despotism, and the way was left open for new constitutional experiments.

"Barebones" Parliament.

The first of these was the assembly that was afterwards known by the nickname of Barebones Parliament. It was a body of representatives nominated by the Independent congregations, and it showed itself wholly unpractical in its proceedings; until, to Cromwell's great relief, the more moderate members, rising early, voted the surrender of their powers into the hands of the Council of State.

Then the officers of the army tried their hands at the task of Constitution-making, and produced the Instrument

of Government, which provided for a Lord Protector assisted by a Council of fifteen, and a Parliament to meet every year and be re-elected every three years. The Parliament was to include representatives from Scotland and Ireland, and representatives were to be given to the larger towns in place of some of the "rotten boroughs." Parliament was to have full legislative power, the Protector having only the right to delay legislation for twenty days. The Instrument of Government.

The first Parliament elected under this new system met in September 1654. Its first work was to discuss the Instrument of Government clause by clause with a view to its amendment. Cromwell promptly demanded the assent of all the members to the fundamental principle of the Instrument—government by "a single person and a Parliament." A hundred members refused, and were excluded. The rest continued to discuss the Instrument, to the neglect of the pressing business of the State, and on the earliest day legally possible Cromwell dissolved the House, with the stern complaint, "Dissettlement and divisions, discontent and dissatisfaction, together with real dangers to the whole, have been more multiplied within these five months of your sitting than in some years before."

For nearly two years Cromwell governed without a Parliament. Early in 1655 he divided the country into military districts, over each of which he placed a Major-General with large powers. Funds were raised partly by a special tax levied on Cavaliers—an impolitic step as tending to keep alive the hostility of the country gentry to the Commonwealth.

In September 1656 Cromwell called his second Parliament. The Irish and Scottish members were nominated by the Government, and a hundred members were excluded for disaffection. Thus purged, the Parliament set itself to

build up a constitutional system as a deliverance from military rule. By the Humble Petition and Advice the Protector was requested to take the title of king and govern by the advice of two Houses. Though prevented by the opposition of the army from assuming the royal title, Cromwell accepted the other proposals of the Petition. He was solemnly installed as Lord Protector in Westminster Hall in June 1657, and selected a number of members of Parliament to form a House of Lords. As the members so selected were those on whom he could depend, and the excluded members of the Lower House were readmitted at the beginning of the next session, the attitude of the House of Commons proved very different from what it had been in the previous session. Wearied with its opposition and attacks on the Constitution, Cromwell dissolved his second Parliament in February 1658, with the final appeal, "Let God be judge between you and me." Eight months later the great Protector was dead. His years of rule had been conspicuously successful in every direction except in the building up of a new constitutional system. His failure in this direction was due partly to the unwillingness of the army to lose hold of power, partly to the divided state of the country. But, most of all, it was due to the strong individualism that Puritanism had fostered. His Parliaments were jealous in the assertion of their rights, but unwilling to subordinate their pretensions to the pressing need for co operation and loyalty. The experiment in self-government had come too soon; the need for practical efficiency was paramount; and so the Parliamentary system of the Commonwealth failed.

The Humble Petition and Advice, 1656.

A year of confusion, 1659.

A year of constitutional confusion followed. Richard Cromwell had no hold over the army, and if there had been any one outstanding figure among the officers, a

military dictatorship might have been set up. At the end of the year a Parliament met, but was dissolved in April, 1659, on the demand of the army, which then brought back Speaker Lenthall and the Rump of the Long Parliament. Richard Cromwell resigned, and the practical power fell into the hands first of one general, then of another. In October the Rump was driven out by one section of the army, but was restored by another section in December. Then at last Monk marched south at the head of the soldiers who had been serving in Scotland. Everything depended on his decision, and the news that he had declared for a free Parliament awakened the greatest enthusiasm throughout the country. At the end of February the members of the Long Parliament who had been expelled in 1648 were reinstated, and then the Parliament that had passed through so many changes in its twenty years of life voted its own dissolution. The new Parliament that had assembled in April was largely Presbyterian in its composition, but the excesses of the army had driven the Presbyterian party into alliance with the Royalists. Only one policy was possible; the associations of the past must be recalled to protect the liberties of the future. With a great sigh of relief England gathered up the threads of the continuity of her national history. The army that had saved English liberty, only, in the end, to threaten it with destruction, melted soberly away, to be reabsorbed in the civilian population. Churchmen and nobles came out of their retirement, old habits of life were resumed. The nation had gone back, in Milton's passionate words, to "the detested thralldom of kingship."

CHAPTER XIII

THE RESTORATION PERIOD

THE reign of Charles II. is of interest to the student of the Constitution for three reasons. It shows how far the events of the preceding period had shifted the centre of gravity of the Constitution; it marks an important advance in the recognition of the principle of ministerial responsibility; and it is the period during which our modern party system begins.

The Restoration.

According to the legal view, the accession of Charles II. took place on the day that his father died, and the first year of the Restoration was the eleventh of the reign. It followed, of course, that all laws passed during the Commonwealth period were invalid, as lacking the royal assent. Accordingly, the Convention that invited the king to return passed an Act declaring the Long Parliament dissolved, and the first work of the Parliament elected in the middle of the following year was to pass an Act confirming the acts of the Convention.

But though legally Charles was assumed to enter on all the rights that his father enjoyed, politically the events of the previous reign had changed the relation of the crown and the Commons, especially in three directions.

The first of these was finance. The days of unparlia-

mentary taxation were definitely past. James II., at the beginning of his reign, continued to collect taxes till Parliament met, but this was a mere matter of convenience, for Parliament, on its meeting, at once indemnified the king. When Charles wished to be free from Parliamentary criticism it was to Louis XIV. of France, not to his own subjects, that he applied for subsidies.

Parliamentary control of finance.

The Parliaments of the Restoration not only maintained their exclusive right to vote supplies, they also revived the custom of allotting supplies to certain definite objects, and regarded with peculiar jealousy any attempt by the ministers of the crown to misuse supplies for other purposes. But it was not till after the Revolution that this system of allotment became a regular and recognized part of the business of the Commons.

In 1662 Parliamentary control over taxation became complete in another direction. By a friendly arrangement between Clarendon and the Archbishop of Canterbury, Convocation now ceased to vote clerical taxes, and in return for this the clergy obtained the right to vote for members of Parliament. So the clerical estate, as a separate political entity, finally disappeared.

The second direction in which the relation between the crown and Parliament had changed was in regard to the control of national religion. Under the influence of Lord Clarendon, Falkland's old colleague, who now became the chief minister of the crown, Parliament showed itself more starkly clerical than the king, who was led by his sympathy with the Roman Church, and by his natural temperament, to desire toleration. In a series of Acts known as the Clarendon Code, a determined attempt was made to re-establish the supremacy of the Church. The Corporation Act imposed a religious test on all candidates for municipal

Parliamentary control of religion.

office. The Corporations generally elected the borough members of Parliament, and the object of this Act was to ensure that the members so elected should be faithful members of the Church of England. The Act of Uniformity re-established the Prayer Book, as revised after the Savoy Conference, and ordered the expulsion of all clergy who did not, by St. Bartholomew's Day, give their "unfeigned consent and assent" to it. About two thousand clergy refused, and St. Bartholomew's Day 1662 may be regarded as the birthday of English nonconformity. The Conventicle Act, passed two years later, prohibited, under severe penalties, meetings for religious worship other than those of the Established Church; and finally, the Five Mile Act, passed at the time of the Plague, prohibited any dispossessed minister from coming within five miles of any corporate town. This Act had the unforeseen result of making the larger unincorporated towns centres of nonconformist influence.

This Clarendon Code was the last word of a conception of national religion that is difficult for us to understand, because it is alien from our modern modes of thought. To men trained in the school of Clarendon, unwillingness to conform to the religion prescribed by the State was mere self-will, subversive of all organized authority. Schemes for "comprehension" were in the air, but the bitterness left by the oppression of the Commonwealth period hardened the hearts of the bishops against any concessions to Puritan opinion.

Declarations of Indulgence. Twice the king tried to secure toleration by the issue of Declarations of Indulgence. The first Declaration was issued in 1662, and was withdrawn in a few weeks in deference to the strong opposition of Parliament. Ten years later as the outcome of the secret Treaty of Dover,

Charles issued a more sweeping declaration, suspending the whole code of penal statutes. When Parliament met early in the following year, the king was obliged to withdraw the Declaration and the Test Act was passed, enforcing a threefold religious test on all holders of civil or military office. Much of the hostility against toleration during this period was due to the deep-seated suspicion of Roman intrigues that grew out of the relations of Charles with his cousin Louis XIV., who posed as the champion of the Roman Catholic Church, stamped out the Huguenot movement in France, and tried to crush the little Protestant state of Holland. Both on political and religious grounds, the trend of English opinion was hostile to France, and the close connexion between the later Stuarts and the French monarchy was one of the chief influences that led to the Revolution.

Judicial independence.

The third direction in which the struggles of the previous period had made a permanent change was in regard to judicial matters. The day for administrative courts was over. The Star Chamber and Court of High Commission had been declared illegal, and the later effort of James II. to set up a Court of Ecclesiastical Commission was one count in the indictment against him. The ordinary legal system still gave inadequate protection to the subject as against the Government, but the worst abuses of the previous period — the dismissal of judges unwilling to subordinate the judical system to the executive, the fining and imprisonment of juries for verdicts displeasing to the authorities—now gradually disappeared.

Securities for individual liberty.

One of the worst abuses of the earlier period had been the practice of administrative imprisonment. The law provided two remedies for wrongful detention. The first of these was the writ of Habeas Corpus. The origin of

this is to be found in the right claimed by the kings of the early Middle Ages to supervise the administration of justice in their realm. Any man who kept a subject of the crown in prison was liable to be ordered by the king to produce the prisoner in person and explain the cause of his detention. The king might issue such an order at the request of any friend of the imprisoned person, and the courts gradually came to grant such writs as a matter of right.

Habeas Corpus.

But it rested with the court to say what was a valid return to a writ. For example, in the case of the five knights who refused to contribute to the forced loan levied by Charles I. in 1628, the court decided that "by special command of the king" was a valid ground for imprisonment, thus placing the liberty of the subject absolutely at the discretion of the executive. But the authorities could also, in many other ways, make it difficult for the subject to secure the protection of the writ. It was to remedy some of these abuses that the Habeas Corpus Act of 1679 was passed. It provided for writs to be issued even when the courts were not sitting, under penalty of a heavy fine; it prohibited the imprisonment of accused persons in places like the Channel Islands, where the English courts had no jurisdiction; and it obliged the gaoler, under severe penalties, to produce the prisoner without undue delay.

Bail.

The other main security for the liberty of the subject was the system of bail, which is too large and technical a subject to enter upon here. The chief grievance of this period was the tendency of the judges to demand excessive bail, and so practically deprive the accused of the privilege that the law had secured for him. This was one of the charges made against James II.

An interesting indication of the fact that the centre of

gravity of political power had shifted from the crown to Parliament is afforded by the development of Parliamentary corruption. The Long Parliament of the Restoration, which lasted from 1661 to 1679, earned for itself the nickname of the Pensionary Parliament owing to the number of "placemen and pensioners" who sat in it. Charles II. spent large sums in buying the support of his Parliament, and Louis XIV. also found it worth while to subsidize members of Parliament to support the policy of the French alliance. Parliamentary corruption.

A few words may usefully be said here about the constitution of Parliament in the Restoration period. The Upper House had grown in numbers, from 78 at the beginning of the Stuart period to about 145 at the end of the reign of Charles II. The numbers of the House of Commons had also slightly increased, partly through the addition of four University representatives by James I. and the restoration to nine boroughs of the right to send members, and partly by the addition, in 1672, of representatives from the County and City of Durham. The royal right to create fresh boroughs by charter was exercised for the last time in 1677, when Charles gave Newark two members. The matter was discussed in Parliament, and though never formally taken away, the right was never again exercised. No fresh boroughs were enfranchised till the Reform Act of 1832.

The two other special points of interest in the reign are the growth of the idea of ministerial responsibility and of the party system. For the first seven years of the reign Clarendon was chief minister, and the responsibility for the sale of Dunkirk, the ill-success of the Dutch War, and other misfortunes of the time, were laid at his door by the country, while his austere manners made him unpopular Ministerial responsibility. Clarendon, 1660-1667.

with the young bloods at Court. Charles was therefore not unwilling to sacrifice his minister as soon as Parliament turned against him, and when the House of Commons threatened him with impeachment he fled, and remained an exile till his death at Rouen in 1674. His last years were worthily spent in the compiling of his great History of the Rebellion.

The Cabal Ministry, 1668-1673. Though the Privy Council was the constitutional adviser of the crown, there had been a tendency for some time for successive kings to form an inner circle of advisers, and the nickname of "cabal" had sometimes been given to these groups. By a curious coincidence, the first letters of the names of the men who became the chief advisers of the king after the fall of Clarendon formed the word cabal,[1] and hence this group has become known as the Cabal Ministry, though they were in no way a ministry in the modern sense of the word. For five years the Cabal remained in power, till the Test Act, promoted by Lord Shaftesbury, drove Clifford, who was a Roman Catholic, out of office, and broke up the group. A year later Shaftesbury resigned and became one of the leaders of opposition.

Lord Danby, 1674-1679. The next minister of the crown was Sir Thomas Osborne, Lord Danby, a loyal English Churchman of the old Cavalier type, under whom the Clarendon Code was again in the ascendant, while the opposition—the "Country Party," as it was called—tried in vain to force a dissolution of Parliament. Then came the "Papist Plot" panic, leading to the Exclusion Bill, by which it was proposed to deprive the Duke of York of his right to succeed—to do in 1678 what it became necessary to do ten years later. The

[1] Clifford, Ashley (afterwards Earl of Shaftesbury), Buckingham, Arlington, and Lauderdale.

struggle over this bill gave rise to two political parties, one supporting the claims of Parliament, the other promoting addresses to the crown expressing their abhorrence of the Exclusion Bill—the "Whigs" and "Tories," as they came to be called.[1] The Whigs stood for toleration and Parliamentary control of the succession, while the Tories held by the old doctrines of non-resistance and the supremacy of the Church. With the "Green Ribbon Club" as their centre, and with men like Shaftesbury, Buckingham, Russell, Algernon Sidney as their leaders, the Whigs developed a political organization throughout the country. While the agitation was at its height, it became known that Danby, by Charles's instructions, had offered to sell English neutrality to Louis XIV. for a subsidy of £300,000 a year. His impeachment was promptly voted, and to save his minister Charles dissolved the Parliament that had sat for nearly eighteen years. In the elections that followed the Whigs swept the country. They at once revived the impeachment of Danby, who was committed to the Tower, where he remained for six years. He had vainly pleaded the royal command (Charles had written at the end of the letter: "This letter is writ by my order.—C. R."), and when the king gave him a pardon under the Great Seal,

[1] Both in Scotland and in Ireland misgovernment had called into existence bands of desperate men, whose ferocity was heightened by religious enthusiasm. In Scotland some of the persecuted Covenanters, driven mad by oppression, had lately murdered the Primate, had taken arms against the Government. . . . These zealots were most numerous among the rustics of the western lowlands, who were vulgarly called Whigs. Thus the appellation of Whigs was fastened on the Presbyterian zealots of Scotland, and was transferred to those English politicians who showed a disposition to oppose the Court, and to treat Protestant Nonconformists with indulgence. The bogs of Ireland, at the same time, afforded a refuge to Popish outlaws. . . . These men were then called Tories. The name of Tory was therefore given to Englishmen who refused to concur in excluding a Roman Catholic prince from the throne.—MACAULAY.

the Commons resolved that such a pardon "could not bar an impeachment."

After this, Danby and his misdeeds were lost sight of in the greater controversy between the Whigs and the king about the Exclusion Bill. Charles "played his cards" with consummate ability, while the Whigs made one mistake after another. Two Parliaments were dissolved, and when the third met at Oxford, in 1681, the Whigs alarmed the country by their threats of violence, and so gave Charles, who had obtained a promise of supplies from Louis XIV., the excuse he needed to dissolve the last Parliament of his reign. The defeated party could expect no mercy from their antagonist. Shaftesbury fled to Holland, while Russell and Sidney suffered death on the charge of plotting insurrection. The charters of many of the boroughs were confiscated by Chief Justice Jeffreys, and remodelled in the interests of the crown. The last four years of Charles's life were years of almost unchallenged despotism. No Parliament met, no opposition to the royal will dared to show itself openly. The Whig leaders had played for a great stake and lost; they paid the price in years of humiliation that might have lasted much longer if James had refrained from the one step that broke the allegiance of the Tories—the attempt to re-establish the Roman Catholic religion in England.

The Whigs. In view of the great part that the Whig party was destined to play in the century that followed, it is worth while to close this chapter with a few words as to its composition and policy. Led by a few great nobles, it drew to itself the trading class of the towns, whose Puritan traditions revolted against the Clarendon Code, and the yeomen of the countryside, who resented the dominance of "the squire and the parson." The City of London was strongly Whig, as it had been strongly

Puritan fifty years before. While Charles lived the Whigs were a peace party, because they were afraid to trust the king with a standing army. After the Revolution the Whigs became the war party, while the Tories were the advocates of peace. Algernon Sidney and Locke were the exponents of the political philosophy of the party. The Stuart theory of kingship was defended by Filmer in his *Patriarcha*, and by Hobbes in his *Leviathan*, though not a few of the supporters of divine right held that Hobbes, by his appeal to reason rather than to authority, had given his case away. In opposition to these writers, Sidney and Locke start from the idea of government as resting on an original compact voluntarily entered into, by which a body of freemen set up a sovereign to administer the law. The claim of the sovereign to obedience depends on his fulfilment of his side of the compact. Any particular form of government, therefore, can justify itself on no other grounds than practical effectiveness. The real father of these political speculations was Hooker, from whom they passed to Milton and the pamphleteers of the Commonwealth. Their significance lies in the effort to find a *reasonable* basis for political authority, as against the Church's appeal to scripture and tradition. Indeed "reasonableness" may be said to be the keynote of the whole Whig point of view. It has neither the note of romance—of

> Old, unhappy, far-off things,
> And battles long ago—

that sounds through the records of the fallen Stuarts, and gives a certain glamour to the Toryism of the Nonjurors; nor has it the revolutionary note that inspires the later Radical movement. From the time of the Revolution, the Whig party stood for the stability of existing institutions,

the maintenance of the due balance of authority as between King, Lords, and Commons, the defence of a certain measure of liberty in thought and opinion. It distrusted enthusiasm and great adventures, but welcomed a freedom that "broadened *slowly* down." It produced, in Edmund Burke, the only great political philosopher of the eighteenth century, and shaped the course of political history till nearly the end of the century, when the long supremacy of Pitt opened a new chapter in English political life.

CHAPTER XIV.

THE REVOLUTION

THREE times in our history, in 1399, in 1485, and in 1688 the nation met an attempt to establish despotic authority by changing the direct line of succession, and calling to power a sovereign "whose title to the throne was bound up with the title of the nation to its liberties." In each case an effort was made to carry through the change with due regard to the forms of the Constitution, and to lay the charge of innovation on the Government that was displaced. In a word, all three revolutions were conservative in character, and were inspired by aristocratic rather than by democratic influences.

The Revolution of 1688 was the outcome of a series of measures by which James II. gradually convinced all parties that he intended to restore the Roman Catholic religion, relying on his suspending and dispensing power to override the law, and on a standing army to overawe opposition. The series of events that led to the crisis began in 1685, with the revocation by Louis XIV. of the Edict of Nantes that gave toleration to the French Huguenots—an act that outraged Protestant opinion throughout Europe. In the following year came Hales's case, raising the whole question of the dispensing power

James II., 1685-1688.

Hales's case, 1686.

of the crown. Sir Edward Hales, a Roman Catholic, held a commission in the army, and a collusive action was brought against him by his servant for violation of the Test Act. Hales pleaded a royal dispensation. That the crown had a certain right to dispense individuals from the observance of statute law was generally admitted, but the limits of this power were very ill-defined. To some extent both the dispensing power and the suspending power were part of the papal inheritance that passed to the English monarchy at the Reformation; but in part they were, like the existing right of pardon, the outcome of the old idea that penalties for breach of law were a matter of personal concern between the king and the wrong-doer. In Hales's case the judges decided, almost unanimously, that it was an inseparable prerogative of the crown to dispense with penal laws in particular cases for reasons of which it was the sole judge.

Declarations of Indulgence.

At the beginning of 1687 the dismissal of Lord Rochester from the office of Lord High Treasurer appeared to indicate the king's determination to have none but Roman Catholics as his ministers, and in the same year James tried to buy the support of the Nonconformists by the issue of a Declaration of Indulgence, absolving Roman Catholics and Nonconformists alike from the Test Act. At the same time he made a series of appointments of Roman Catholics to offices at the Universities. Then, early in 1688, the Declaration was reissued, with orders that it should be read in all churches. Against this the Primate and six other bishops petitioned, and were arrested on the charge of seditious libel. The real question at issue in the trial that followed was the suspending power of the crown, for if the king did not possess the power of suspending statutes there could be no seditious libel in

asserting the fact that his attempt to exercise it was illegal. The acquittal of the seven bishops was therefore equivalent to the condemnation of the king for misuse of the royal prerogative. A fortnight before the verdict was given, James's son was born. James's elder daughter Mary, the wife of William of Orange, was now no longer the next heir to the crown, and the possibility of a long series of Roman Catholic kings was one in which the political leaders of the nation could not acquiesce. Tories like Danby and Bishop Compton joined with Whigs like Edward Russell and Henry Sidney to invite William of Orange to "restore English liberty and defend the Protestant religion." With the landing of William at Torbay in November, James's resources crumbled away, and by the end of the year the king had fled, and a Convention had assembled, consisting of the House of Lords, all members who had sat in the House of Commons in any of the Parliaments of the previous reign, and the Aldermen and Councillors of London. By the advice of this irregularly constituted body, a new Convention—only differing from a Parliament in that it was not summoned by royal writs—met in January 1689.

Invitation to William of Orange, June 1688.

The first task of the Convention was to define the existing situation, and this was done by a resolution designed to avoid the dangerous question whether a king could be deposed. "King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people, and having, by the advice of Jesuits and other wicked persons, violated the fundamental laws and withdrawn himself out of the kingdom, has abdicated the government, and the throne is thereby vacant." The House of Lords, where Tory influences were strong, tried to modify the resolution by the substitution of *deserted* for *abdicated*, and by the

Convention of 1689.

omission of the last clause, for the Tory view was that if James had forfeited the throne, the royal office descended (James's infant son being practically ignored) on Mary. While willing that William should exercise all the powers of a king, the Tories were unwilling to abandon the doctrine of hereditary succession in favour of that of Parliamentary sovereignty. William's refusal to accept the office of regent, and Mary's refusal to be queen without her husband, helped to bring about a compromise by which it was agreed that William and Mary should be joint sovereigns, the executive power being vested in William. Archbishop Sancroft, several bishops, and a certain number of the clergy refused the oath of allegiance to the new sovereigns, and became the leaders of the Nonjurors—a body that lasted till the middle of the eighteenth century.

The Declaration of Right.

Before the offer of the crown was made to William and Mary, a Parliamentary Committee was appointed to draw up a statement of those rights, the violation of which had led to the fall of the Stuart kings. This Declaration of Right was presented to the sovereigns at the time of the offer of the crown, and was subsequently passed in the form of "An Act declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown" (generally known as the Bill of Rights). A few weeks later it was adopted as the Claim of Right by a Convention held in Scotland, a clause being added demanding the abolition of "prelacy."

Abuses of previous reign.

The Declaration of Right begins by specifying twelve ways in which James II. had violated the liberties of the people: (1) by the exercise of the suspending and dispensing power; (2) by imprisoning "worthy prelates" who petitioned against it; (3) by setting up a Court of Ecclesiastical Commission; (4) by levying taxes (at the beginning of his reign) without vote of Parliament; (5) by keeping a standing

army in time of peace; (6) by disarming Protestants while allowing Papists to carry arms; (7) by interfering with freedom of elections; (8) by interference with the judicial privileges of Parliament; (9) by packing juries with unqualified persons; (10) by demanding excessive bail; (11) by levying excessive fines; (12) by fines and forfeitures before conviction. "All which are utterly and directly contrary to the known laws, statutes, and freedom of this realm."

Ancient rights and liberties.

Then follow thirteen clauses asserting certain "ancient rights and liberties." The first declares illegal "the pretended power of suspending of laws"; the second declares the dispensing power "as it hath been assumed and exercised of late" illegal; the third declares all "Courts of Commissioners for Ecclesiastical Causes" illegal; the fourth declares the levying of money without vote of Parliament illegal; the fifth declares that all subjects have the right to petition the king; the sixth condemns the keeping of a standing army in time of peace without the consent of Parliament; the seventh claims the right of Protestants to carry arms; the eighth claims freedom of election to Parliament; the ninth, freedom of speech in Parliament; the tenth prohibits excessive bail and cruel and unusual punishments; the eleventh demands that juries should be duly empanelled; the twelfth declares all fines and forfeitures before conviction illegal and void; and the thirteenth asserts that "for the redress of all grievances and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently."

When the Declaration was turned into an Act a clause was added disqualifying from succession any "Popish prince" or "king or queen marrying a papist."

Mutiny Act.

Two other important Acts belong to this year (1689). The first of these was the Mutiny Act, authorizing the exercise of martial law in the army. This Act was passed for six months only, and its annual renewal secured for Parliament an effective control over the military forces of the crown. The other was the Toleration Act, which gave freedom of worship to certain classes of people, papists and those who denied the doctrine of the Holy Trinity being excluded from its benefits. The Toleration Act, and the withdrawal of the Censorship of the Press, which followed a few years later, had far-reaching consequences. They "made government easier by withdrawing a whole sphere of human activity from its influence."[1] By leaving the expression of political and religious opinion free, the Whigs secured the control of the present at the cost of the surrender of the right to shape the future. But toleration, once accepted in the sphere of religion, spread to other spheres of life. Freedom in the expression of opinion necessarily led to the growth of a new spirit of tolerance in politics, so that by the beginning of the eighteenth century impeachment for political offences was already becoming an anachronism.

Toleration Act.

Early in 1690 the refusal of Parliament to acquiesce in an Act of Indemnity led to its dissolution. William was determined that no bloody prescriptions should stain the outset of his reign, and the next Parliament, immediately on its meeting, assented to an Act of Grace. This Parliament took a very important step in the direction of strengthening the authority of Parliament by granting to the king a revenue of £600,000 for his "Civil List" (that is, for the expenses of the Court, etc.), while all the rest of the revenue was now allocated by the House of Commons

The "Civil List."

[1] Gardiner and Mullinger, *Introduction to English History*, p. 165.

to definite purposes, Commissioners being appointed to control and audit the accounts. The practical result of these measures was that, without any statute so ordering, Parliament has met every year since 1689 to raise and appropriate revenue.

Regular sessions of Parliament were thus provided for, but the rights of the electors had still to be protected. The long Parliament of the Restoration had lasted nearly eighteen years, and might have lasted much longer if it had remained subservient to the royal policy. To prevent any such prolongation of the life of Parliament in future, a bill was proposed in 1693 providing that no Parliament should last for more than three years. The bill was vetoed by the king, but was agreed to in the following year. The Triennial Act remained in force till 1716, when, in order to avoid a dissolution at a moment when Jacobite feeling was strong, Parliament passed the Septennial Act, increasing the length of the existing and all subsequent Parliaments to seven years.

Triennial Act, 1694.

One important question was left unsettled at the Revolution. During the seventeenth century the idea had been developing that the ministers of the crown should be responsible to Parliament. The demand in the Grand Remonstrance, the execution of Strafford, the impeachment of Clarendon, and the impeachment of Danby, were all stages in the development of this idea. But while the king remained his own chief executive officer, as William undoubtedly was, it was impossible for ministers to be held responsible to Parliament for a policy in the carrying out of which they were acting under royal orders. Full ministerial responsibility only became possible when the principle had been recognized that "the king can do no wrong," because he is bound to act by the advice of his ministers.

Ministerial responsibility.

The Cabinet. The history of ministerial responsibility is closely connected with the development of the Cabinet, in regard to which the reign of William III marks an important stage of advance. At the beginning of the reign the king tried the plan of choosing his ministers from both political parties, but the want of harmony among them proved injurious, while a composite body of ministers of this kind had no hold over the House of Commons. Accordingly, acting on a suggestion of Sunderland's, the king gradually adopted the plan of choosing his ministers exclusively from the party that was in a majority in the Commons, which for the greater part of the reign was the Whig party. The Whigs were led by a remarkable group of men—Russell, Somers, Montagu, and Wharton—whose close association earned for them the nickname of the "Junto." This Whig Junto remained in office till 1697, when a Tory reaction in the country led William to begin a gradual substitution of Tory ministers. The chief work of the Whigs had been to support the war policy of the crown, but one incidental event of their time of power deserves record. In 1695 the Licensing Act expired, and the Government declined to recommend its renewal. The "liberty of the press," for which Milton had pleaded so eloquently half a century before, thus became an accomplished fact, though many hindrances—the condition of the law of libel, the stamp duty, etc.—still hindered the development of newspapers.

Act of Settlement, 1701. Soon after the rise of the Tories to power, the death of the Duke of Gloucester, only son of Anne, made a fresh arrangement of the succession necessary. The Act of Settlement was therefore passed, entailing the throne in the heirs of Sophia of Hanover, daughter of the ill-fated Elector Palatine, who had married James I.'s daughter

Elizabeth, and whose attempt to secure the throne of Bohemia had been the immediate cause of the outbreak of the Thirty Years' War in Germany. In the interest of the Protestant succession, several descendants of the Stuart family more directly on the line of succession were passed over, and the claim of the Hanoverian dynasty therefore rests on a Parliamentary title.

The Act of Settlement afforded an opportunity for taking fresh security against abuses of the royal prerogative, and a series of clauses placed new restrictions on future sovereigns. Most of these explain themselves, but one or two require some comment. (1) It was provided that all future sovereigns should be in communion with the Church of England (an additional security against "Popery," or, perhaps, German Lutherism); (2) England was not to be involved in war on behalf of any foreign dominions of the sovereign, except by consent of Parliament; (3) no English sovereign was to leave the country without consent of Parliament; (4) "all matters relating to the well-governing of this kingdom, which are properly cognizable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same"; (5) no foreigner could be a Privy Councillor, or hold any office of trust under the crown; (6) "no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons"; (7) judges were to hold office during good behaviour (*Quamdiu se bene gesserint*), but were to be removable upon address from both Houses of Parliament; (8) no pardon under the Great Seal could bar an impeachment.

Of these clauses Nos. 4 and 6 are of special importance.

The Cabinet and the Privy Council.

No. 3 was repealed early in the reign of George I. The rest are still part of English constitutional law. No. 4 is an indication of the jealousy with which Parliament regarded the growing tendency for an inner council to take over the work of advising the crown that had formerly belonged to the Privy Council. As soon as ministers began to be chosen from one party they began to act together in a way that was impossible while they belonged to different parties. So the germ of the "Cabinet" began to form as a kind of informal committee of the Privy Council. With this came the beginning of the idea of collective responsibility. It was to check this, and make every councillor answerable personally for the advice that he gave the crown, that the latter part of the clause was added. The proposal was soon seen to be impracticable, and the clause was repealed before it actually came into operation. It is only interesting as showing the dislike with which the Commons regarded the growth of the Cabinet system.

Placemen in Parliament.

Clause 6 was an attempt to restrict royal influence. If it had been carried out, it would have profoundly changed our political institutions, for it would have prevented any minister of the crown from sitting in the House of Commons, and thus deprived Parliament of any effective control over the executive. As soon as this was perceived the clause was repealed, and in its place an Act was passed in 1705, by which any member of the House of Commons accepting an office of profit under the crown must vacate his seat and stand for re-election. Any office of profit created after 1705 altogether disqualified the holder from being a member of the House of Commons. This Act has had a curious result. No member can legally resign his seat in Parliament. If, therefore, any member wishes to retire he applies for the Stewardship of the

Chiltern Hundreds, or the Bailiffship of the Manor of Newstead, these being offices of profit under the crown. As soon as his appointment has been gazetted, he ceases to be a member of Parliament till he has stood for re-election, if he wishes to do so.

We must return for a little while to the Tory ministry of 1700. In that year an attempt was made to impeach Somers for his share in the Partition treaties, and other Whig ministers were threatened with the same fate. But a quarrel was then in progress between the Lords and the Commons, and when the day for Somers's trial arrived the Commons refused to appear, and Somers was acquitted. Some Impeachment.

To the same year belongs the episode of the Kentish Petition. The factious opposition of the Tories to the king stirred up a good deal of indignation in the country, and the Grand Jury of Kent presented a petition in which they requested the House to set aside "their distrust of his most sacred majesty" and "turn their loyal addresses into bills of supply." The Commons voted this mild remonstrance to be "scandalous, insolent, and seditious," and the five Kentish men who presented it were ordered into custody. The case attracted much attention, raising, as it did, the whole question of the right of petition. Two years later a more remarkable case showed even more clearly the temper of the House. In 1703 a burgess of Aylesbury, named Ashby, sued the returning-officer, White, for refusing his vote. The case went to the House of Lords, which decided in favour of Ashby. Against this the Commons protested on the ground that they had the sole right of judging all matters relating to the election of their members. Five other Aylesbury men, encouraged by Ashby's example, brought actions against the returning-officer, and were

The Kentish Petition

Ashby v. White.

committed to prison by the Commons for breach of privilege. A prorogation ultimately set them free, and the question at issue remained unsettled. But the House of Commons has never since claimed the right to judge the right of electors, which is now settled by a revising barrister, with the right to appeal to the Supreme Court.

In September 1701 James II. died, and Louis XIV., in defiance of the terms of the Treaty of Ryswick, recognized his son, the "Old Pretender," as king of England. This open challenge roused a strong resentment in England, and brought the Whigs back into power. A few weeks later, on the eve of the outbreak of hostilities, William died.

Queen Anne, 1702-1714.

The accession of Queen Anne changed the political situation in two ways. For, in the first place, it involved the separation of political and military authority. William's office as the war leader of the nation fell to Marlborough, who was able, with the help of his friend Godolphin, to dominate the ministry at home. At first he tried, as William had done, to work with a composite ministry, but by 1708 the ministry had become almost completely Whig.

The accession of Anne also affected the situation in another way. A woman of only average ability, she depended on her ministers in a way that William had never done. The ministers of the crown were therefore obliged to accept the responsibility for their policy, and thus the idea of the irresponsibility of the sovereign began to grow up. For a time the Whigs were inclined to attribute any political mismanagement to the queen's well-known Tory sympathies. "For several years past," said Lord Rochester in 1711, "they had been told that the queen was to answer for everything; but he hoped that time was over; that, according to the fundamental con-

stitution of this kingdom, ministers were accountable for all."

The closing years of the reign were marked by a Tory reaction in the country, due partly to weariness of a war that Marlborough was suspected of prolonging from motives of personal ambition, and partly to a revival of "High Church" influences, of which Dr. Sacheverell made himself the mouthpiece. Anne was therefore able to appoint a Tory ministry in 1710. The Whigs still retained a majority in the House of Lords, and hoped to baulk the new ministers there, but in December 1711 Harley and St. John induced the queen to create twelve Tory peers—a number sufficient to give the Government a working majority in the Upper House. After the war had been closed by the Peace of Utrecht (1713), the question of the succession came to the front, owing to the ill-health of the queen. Bolingbroke (St. John), having quarrelled with Harley over the Schism Act, secured his dismissal, and entered on some obscure intrigues with the Jacobites. While these were in progress, Anne was struck down with apoplexy, and two great Whig leaders, the Dukes of Somerset and Argyll, availing themselves of their privilege as Privy Councillors, attended the ministerial council and insisted that Lord Shrewsbury should be appointed to the office of Lord High Treasurer, which Harley had vacated. The queen was just sufficiently conscious to ratify the appointment, and on the following day she died. How far Bolingbroke had committed himself to the upsetting of the Act of Settlement it is impossible to say; certainly, the sudden illness of the queen and the unexpected intervention of Argyll and Somerset threw his plans into confusion, and ensured the undisputed succession of the Hanoverian

Tory reaction, 1710.

dynasty. As he wrote to Swift years afterwards, "Fortune turned rotten at the very moment it grew ripe." The incident is interesting as the last occasion on which Privy Councillors exercised the right to attend a meeting of the Council to which they had not been summoned.

CHAPTER XV

THE "REIGN" OF THE WHIGS

THE first two sovereigns of the House of Hanover find a place in our Constitutional History less for what they did than for what they did not do. Below the average in ability and moral character, and little interested in the internal affairs of England, they were content to leave the government of the country in the hands of the party to which they owed their succession. "If the two first Hanoverian kings had been Englishmen instead of Germans, if they had been men of talent and ambition, or even men of strong and commanding will without much talent, Walpole would never have been able to lay the foundations of government by the House of Commons and by the Cabinet so firmly that even the obdurate will of George III. was unable to overthrow it."[1]

Condition of parties.

For nearly forty years the Tory party, divided between sympathy with the Jacobite cause and hostility to the Roman Catholic religion, which the Old Pretender refused to renounce, ceased to be an effective force in English politics. The opposition that ultimately brought Walpole's long period of rule to an end was composed largely of malcontent Whigs. From the beginning of the reign of

[1] Morley, *Walpole*, p. 49.

George I. the Whig leaders were divided—Sunderland and Stanhope representing the section of the Whigs that leaned on the support of the House of Lords, while Walpole and Townshend adopted the policy of strengthening the authority of the House of Commons. After the death of Sunderland, Carteret succeeded as leader of the former section in the House of Lords, and became Walpole's most ambitious rival, while Pulteney led the malcontent Whigs in the Commons.

Walpole's policy.

From 1721 to 1742 Walpole was (except for a few weeks after the accession of George II.) first minister of the crown. His conspicuous financial ability won for him the support of the commercial classes and the confidence of the landed interest, while his tactful management of delicate questions in the Commons secured for him a position of unchallenged supremacy at Court. His policy, both at home and abroad, was to maintain the *status quo*. The twenty years of his rule did not add a single first-class measure to the Statute Book. But he gave England that sense of stability which was perhaps its greatest need after nearly a century of disturbance.

The period of Walpole's supremacy was one of great importance in the development of the Constitution—and this especially in three directions. It was the period during which the centre of gravity of political power shifted definitely to the House of Commons; the foundations of the Cabinet system were laid; and the office of Prime Minister began to develop.

The Peerage Bill, 1719.

At the very beginning of his career, Walpole took the lead in opposing a scheme that, if it had been carried out, would have given the House of Lords a position of unchallengeable supremacy. The Peerage Bill of 1719 was due to the desire of Sunderland to protect himself against the

possibility of the succession of the Prince of Wales, who, in accordance with the traditions of the House of Hanover, was bitterly opposed to his father's ministers. The Bill provided that the number of Peers should never be increased beyond six above the number then existing. The result would have been to make the House of Lords a close oligarchy, and to deprive the ministers of the crown of the only method by which, as a last resource, the resistance of the Peers to the will of the people could be overcome.

The Bill was supported by the king, and every possible influence was brought to bear to induce the Commons to pass it. But Walpole took the lead in opposing it, and in a famous speech in the House of Commons exposed the real significance of the proposal so convincingly that the Bill was rejected by nearly a hundred votes.

Three years before this the Septennial Act had given to the House of Commons a new position of independence, and when, in 1721, Walpole, after three years of opposition, assumed the office of First Lord of the Treasury and Chancellor of the Exchequer, he adopted the policy of strengthening its authority. The extent to which he resorted to deliberate and systematic bribery as a means of maintaining his ascendancy has been exaggerated by his opponents. Corruption had been common since the Restoration, and was carried much farther after the fall of Walpole. What Walpole did was to use the immense patronage that fell to him as chief minister of the crown in rewarding faithful supporters. "A member of Parliament who desired anything, from a lucrative office for himself to a place as tide-waiter for the son of a tenant, knew that his only chance would be to support the

Growing powers of House of Commons.

Royal influences.

administration." As Burke said, Walpole governed, not by corruption, but by party attachments.

How potent the influence of royal patronage was, may be gauged from the fact that in the first Parliament of George I. no less than 271 members held offices or pensions. Soon after Walpole's fall the Place Bill was passed, excluding from membership of the House of Commons a large number of officials. But royal influence remained dangerously strong till Lord Rockingham's Civil List Act of 1782.

The Cabinet.

While the ascendancy of the House of Commons was being established, another constitutional change was in progress. As we have seen, the growing size and composite character of the Privy Council had already led to the growth of smaller informal councils of ministers. Under Queen Anne the chief ministers of the crown met regularly under the presidency of the queen. These meetings of the Council were attended only by those who were invited. The last case to the contrary, on the day before the death of the queen, has been already mentioned.

George I., who did not understand English, declined the irksome duty of presiding over meetings of the Council. Two important results followed. Relieved of the presence of the king, ministers were able to confer more freely, and to present to the king proposals on which they had already agreed; and the minister who presided in the king's place naturally gained a certain pre-eminence.

By this time the right of the chief ministers of the crown to a place in the "Cabinet" had been clearly established, but it was not till nearly the end of the century that offices like those of Lord Chamberlain and Master of the House, and even the Archbishopric of Canterbury, ceased to carry with them the right to a seat in the

Cabinet. Walpole himself called together his Cabinet very infrequently, preferring informal consultations with the Chancellor and Secretaries of State together with any ministers specially interested. In the Cabinets of Walpole's time, and for a considerable period afterwards, the number of commoners was very small—the younger Pitt being actually the only commoner in his first Cabinet. This may help to account for the jealousy with which, throughout the period, the Commons regarded this new constitutional development.

Closely connected with the growth of the Cabinet, the farther progress of which we shall trace in a later chapter, was the rise of the office of Prime Minister. The Prime Minister.

Under our present constitutional system the Prime Minister is distinguished from other ministers of the crown in three ways: (1) He has the right, in consultation with the sovereign, of selecting the other ministers. (2) He presides over the meetings of the Cabinet, and has the final deciding voice on all questions, so that in the last resort he may require any other minister either to support his policy or to resign. (3) He is the sole medium of communication between the Cabinet and the crown. "As the Cabinet stands between the sovereign and Parliament, so the Prime Minister stands between the sovereign and the Cabinet."

Up to the end of the seventeenth century the most important officer of the crown was the Lord Treasurer, but after the accession of George I. this office was put "in commission," the practical management of the national finances having been, some time before, transferred to the Chancellor of the Exchequer. From the time of Walpole the office of First Lord of the Treasury was generally held by the minister who occupied the most prominent place in the Cabinet, but it was long before any minister ventured

to claim the title of Prime Minister. The younger Pitt was the first minister who can be said to have exercised fully the three distinctive rights that belong to the office.

But undoubtedly Walpole's long period of ascendancy did much to develop the idea, afterwards explained by Pitt, "that there should be an avowed and real minister, possessing the chief weight in the Council, and the principal place in the confidence of the king." Indeed, in the attacks on Walpole just before his fall, one of the charges made against him was that he had set himself up as sole or Prime Minister, contrary to the usage of the Constitution. Walpole disclaimed any intention of the kind, and asserted that as one of His Majesty's Council he had only one voice. The strength of the feeling against any attempt to establish a Prime Minister was shown in a protest drawn up by the minority in the House of Lords, wherein it is asserted that "we are persuaded that a sole or even a First Minister is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any government whatsoever." It was not till Parliament had established its control over the ministers of the crown more fully that the office of Prime Minister became a clearly recognized part of the constitutional system. The title "Prime Minister," like the name "Cabinet" and the political titles of Whig and Tory, first appears as an opprobrious nickname.

Disuse of royal veto.

While these new developments were in progress, some older constitutional usages were falling into disuse. The royal veto on legislation, which William III. had exercised several times, has not been used since the accession of George I. George III., in his efforts to reassert the personal authority of the sovereign, made no attempt to revive this legislative veto, though he told Lord North

that he would never consent to use any expression which tended to establish that at no time the right of the crown to dissent was to be used.

The last attempt to use the weapon of impeachment for political purposes belongs to the year 1715. The Tories had in 1701 tried to impeach Somers, Halifax, and other Whig ministers of William III. for their share in the Partition Treaties. The Whigs now determined to impeach Oxford, Bolingbroke, and Ormonde for their share in the Peace of Utrecht. The impeachments were ultimately dropped two years later, and though Walpole's opponents clamoured for his impeachment after his resignation in 1742, the common sense of the country resisted the suggestion. Only two impeachments—those of Warren Hastings for misgovernment in India (1788), and Lord Melville for misappropriation of official funds (1804)—have taken place since this time, and though both were influenced by political motives, neither was for political acts, and both ended in the acquittal of the accused. And impeachments.

The abandonment of the impeachment of ministers was due partly to a growing recognition of the "rules of the game" and partly to the change from individual to collective responsibility. If every party triumph was to be followed by the impeachment of the leaders of the defeated party, the amenities of political life would be destroyed, and men would hesitate to serve their country at the risk of disgrace and ruin as soon as the tide of party feeling turned. The party system only remains tolerable while both parties are willing to accept the assumption that their opponents, however misguided their policy may be, are actuated by sincere desire for the national well-being. The abandonment of the attempt to impeach defeated ministers was a first step towards this recognition.

Impeachment, as a weapon for enforcing ministerial responsibility, was also subject to the objection that some direct offence against the law must be proved to secure a conviction. In the words of the Grand Remonstrance: "It may often fall out that the Commons may have just cause to take exception at some men for being councillors and yet not charge those men with crimes."

"The idea of the collective responsibility of ministers—one of the chief characteristics of the Cabinet system—began to develop as soon as the king ceased to attend meetings of the Council. But it could not become complete till the Prime Minister was able to enforce the principle that no other minister should communicate to the king information as to the proceedings of the Cabinet. And it was not till the end of the century that this became a clearly recognized constitutional principle.

Into the details of Walpole's administration there is no need to enter. His fall in 1742 forms a definite turning-point in the history of the eighteenth century. Professor Hearn has summarized the contribution made by Walpole to the development of the Constitution: "It was Walpole who first administered the government in accordance with his own views of our political requirements. It was Walpole who first conducted the business of the country in the House of Commons. It was Walpole who in the conduct of that business first insisted upon the support for his measures of all servants of the crown who had seats in Parliament. It was under Walpole that the House of Commons became the dominant power in the state, and rose in ability and influence as well as in actual power above the House of Lords. It was Walpole who set the example of quitting office, while he still retained the undiminished affection of the king, for the avowed reason

Professor Hearn on Walpole.

that he had ceased to possess the confidence of the House of Commons."

The retirement of the great minister left the way free for the rise of William Pitt and the adoption of a new and more adventurous policy. William Pitt, like his son afterwards, depended less on the support of the House of Commons than on that of the unrepresented classes outside. It was this that George II. had in mind when he said once to Pitt, "You have taught me to look elsewhere than in the House of Commons for the opinion of my people." When Pitt resigned office in 1757 "it rained gold boxes"—the city councils tumbling over each other in their eagerness to bestow the freedom of their cities on the "great commoner." "Walpole," says Dr. Johnson, "was a minister given by the king to the people, Pitt was a minister given by the people to the king." The positions of the elder and the younger Pitt illustrate the influence that public opinion was able to exercise even on the unreformed Parliament of the eighteenth century.

Rise of Pitt, 1740-1760.

CHAPTER XVI

GEORGE III. AND THE PERSONAL AUTHORITY OF THE CROWN

DURING the reign of the first two Hanoverian sovereigns the direct authority of the crown had been reduced to a minimum. George II. had been unable to dispense with Walpole in 1727, and unable to retain him fifteen years later. At the end of his reign Pitt was supreme in the country, while Newcastle, by his adroit administration of patronage, "managed" the House of Commons. The combination seemed an assurance of the continuance of Whig supremacy. But the accession of George III. changed the political situation. The new king had been brought up in England, and indoctrinated from his earliest years with lofty conceptions of the kingly office. From Blackstone's *Commentaries* he had learnt the legal theory of the royal prerogative, while Bolingbroke's tract on the *Patriot King* had given him the idea of a king standing above all parties and rallying around him the nobler instincts of the nation. He came to the throne determined to re-establish the personal authority of the crown. "According to his system he was himself to be the only element of coherence in a ministry; it was to be formed by the Prime Minister in accordance with his instructions, and each member of it was to be guided by his will. The scheme would have

Character of George III.

made the ministers who were responsible to Parliament mere agents of the king, who was not responsible for his public acts. It necessarily made the king the head of a party. He needed votes in Parliament, and he obtained them, as the Whig leaders had done, by discreditable means."[1]

The "King's friends."

The Tory party, now purged of its Jacobite tendencies, rallied to the support of the king in his struggle with the Whigs, while public feeling, grown somewhat weary of the long Whig supremacy, was disposed to welcome a reassertion of royal authority. But besides this, the king set himself to build up, by direct and indirect bribery, a body of "king's friends," who were expected to support the existing Government only in as far as it accorded with the royal policy. By cutting down his personal expenses the king was able to supply large sums for the purchase of votes, while the exercise of royal patronage gave to the ministers of the crown various other methods of securing support.

The Whigs.

The Whig party included most of the great nobles, who by their control of "pocket-boroughs" were able to "pack" the House of Commons with their nominees. In the eighteenth century two-thirds of the members of the Lower House were nominated, the majority of them by Whig patrons. If the Whig party could hold together, it occupied an impregnable position; but the king calculated on disunion among his opponents, and the event proved that his calculations were well founded.

In 1760 the Whigs were in a majority in the House of Lords, which at this time numbered about two hundred. But more than a hundred fresh peerages were created during the reign of George III., and the House had become pre-

[1] Hunt, *Political History of England.*

dominantly Tory by the beginning of the nineteenth century.

The King's first object was to secure the control of the appointment of ministers, which had been almost entirely lost by the earlier Hanoverian kings.

Lord Bute.

He opened the campaign immediately on his accession by introducing Lord Bute into the Cabinet as his representative. Within a few months Bute's intrigues compelled Pitt to resign, and Newcastle was driven out of office six months later. But Bute proved himself quite incapable of carrying on the work of government, and early in 1763 he gave place to George Grenville, who was supported by a section of the Whigs. Grenville's short period of office was notable for the beginning of the controversy with the American Colonies and the first appearance of the strenuous and disreputable figure of Wilkes. Both these matters will be more conveniently dealt with later.

The Grenville and Rockingham ministries.

George III. and Bute appear to have thought that Grenville would prove to be a minister amenable to royal influence. But they soon discovered that they were mistaken, and within less than three years the king accepted a Whig ministry under Lord Rockingham as a way of escape from Grenville's dictation. If Rockingham could have secured the co-operation of Pitt, he might have established a ministry strong enough to withstand the intrigues of the king; but Pitt, in what Lecky has described as "the most disastrous incident of his career," refused to join the Rockingham ministry. A year later he became a member of the Duke of Grafton's composite Cabinet, but his transfer to the House of Lords as Earl of Chatham, and his long illness immediately after, deprived him of all influence over the policy of the ministry. The Grafton ministry, like a water-logged vessel, laboured on wearily for four

years till it fell to pieces. Its condemnation stands written in the *Letters of Junius* and in Burke's great pamphlet, *Thoughts of the Cause of the Present Discontents*. In 1770 Lord North became Prime Minister, with George III. as the actual leader of the policy of the ministry.

Lord North, 1770-1782.

The American controversy.

The divided condition of the Whig party enabled the king to retain Lord North in office for twelve years. The chief event of these years was the outbreak of war with the American colonies. In many ways this war may be regarded as a continuation, under new conditions, of the Parliamentary struggle of the seventeenth century. In both cases a self-opinionated and obstinate sovereign was standing for legal right against constitutional usage; in both cases the demand for "taxation by consent" was mixed up with other grievances; in both cases obstinacy on one side was met by violence on the other, and so the sword was called in to sever the tangled knot. The sympathy of a large section of the people at home was with the American colonies in their resistance to Lord North and the king. Lord Chatham himself supported their claims till the intervention of France reawakened ancient national animosities.

It was not till 1780 that the various sections of the Whig party were able to unite. In that year a great Yorkshire petition for economical reform, the passing of a resolution proposed by Dunning in the Commons, asserting "that the influence of the crown has increased, is increasing, and ought to be diminished," and a Reform Bill, brought forward by the Duke of Richmond, all served to show the growing discontent of the country. In March 1782 Lord North was forced to resign, and Lord Rockingham formed his second ministry, with Shelburne, who had succeeded Lord Chatham, as leader of a section of the

party, and Fox as Secretaries of State, and Burke as Paymaster of the Forces.

Lord Rockingham's ministry, 1782.

Lord Rockingham tried, in a series of measures, to restrict the power of the crown over the House of Commons. By the Contractors Act persons acting as underwriters for Government loans were disqualified from sitting in Parliament—the grant of a share in war loans having been one of the indirect forms of bribery with which the ministers of the crown had been able to secure support. The Civil List Act abolished a number of offices in the royal patronage, and brought the Secret Service Fund under Parliamentary control. It also ensured the publicity of all crown pensions by a provision that they were to be paid through the Exchequer.

The Coalition ministry of Fox and North.

On Rockingham's death in July 1782, Shelburne became Prime Minister, and Fox and Burke left the ministry, which was joined by the younger Pitt as Chancellor of the Exchequer. In less than a year the section of the Whigs that looked to Fox as their leader joined with Lord North to overthrow Shelburne and form the notorious Coalition ministry. Public feeling was outraged at so unnatural a combination, and by a most unconstitutional use of his personal influence[1] the king was able to secure the rejection of Fox's India Bill in the House of Lords, whereupon he dismissed the ministry and invited Pitt to form an

[1] The king wrote on a card: "His Majesty allows Earl Temple to say that whoever voted for the India Bill was not only not his friend, but would be considered by him as an enemy; and if these words were not strong enough, Earl Temple might use whatever words he might deem stronger and more to the purpose." On the day on which the bill was rejected by the House of Lords, the Commons resolved, "That to report any opinion, or pretended opinion, of His Majesty upon any bill or other proceeding, depending in either House of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanour, derogatory to the honour of the crown, a breach of the fundamental privileges of Parliament, and subversive of the Constitution."

administration. The political situation was extraordinarily interesting, as Pitt's opponents were in a majority in the House of Commons. Pitt claimed the right to choose his own time for dissolving Parliament, and his opponents dared not force a dissolution by refusing supplies. When the new elections took place in March 1784 he found himself supported by a majority that ensured for him fifteen years of unchallengeable political supremacy. For nearly twenty-five years George III. had carried on his struggle with the Whigs, and in the end the Whig party, broken and discredited, found themselves condemned, with one short interval, to nearly fifty years of exile from power. But the real victory rested not with the king, but with the minister who knew how to enlist in his support the general confidence of the nation. Pitt recognized the importance of making the House of Commons a body really representing the people, and purging political life of corruption by sweeping away the conditions that made corruption easy. If the French Revolution had not intervened, he would probably have tried to carry through the work of Parliamentary Reform that was delayed for a generation by the long struggle with France and the reaction that followed it.

William Pitt, the younger.

The constitutional history of the period would be incomplete without some account of the various political questions that are associated with the name of John Wilkes. Wilkes first comes into prominence as editor of the *North Briton*, a journal devoted to violent and sometimes scandalous attacks on Lord Bute, whose policy was supported by Smollett's paper *The Briton*. No. 45 of the *North Briton* contained a vehement attack on the King's Speech, which Grenville determined to treat as seditious libel. The Secretary of State, Lord Halifax, issued a "general warrant"—"a ridiculous warrant against the

Wilkes and the *North Briton*.

whole English nation," as Wilkes described it—against the editor and printers of the *North Briton*. Under this warrant fifty persons, including Wilkes, were arrested. As Wilkes was a member of Parliament, this action of the Government raised two questions—the question of the privilege of freedom from arrest, and the legality of general warrants. With regard to the latter point the Courts of Justice declared general warrants illegal, and Wilkes secured heavy damages from Lord Halifax and his Under-Secretary for illegal arrest. This decision, afterwards ratified by resolution of the House of Commons, was of great importance, for a general warrant gave the executive unrestricted powers of arrest, whereas a warrant specifying the name of the individual against whom it is issued only authorizes the Government to arrest that individual.

The House of Commons took up the quarrel with Wilkes, voted No. 45 a "false, scandalous, and seditious libel," and declared that the privilege of freedom from arrest did not cover seditious libel. Wilkes was expelled from the House, and on his withdrawal to France was outlawed by the Court of King's Bench. These events raised Wilkes to the position of a popular hero among those opposed to Grenville's ministry, and he was thanked by the Common Council of London for his defence of public liberty.

It is interesting to remember that Wilkes's case affords the last example of the penalizing of members for votes given in Parliament, General Conway and two other officers being deprived of their commissions for refusing to support the Government in the matter of general warrants.

The Middlesex election.

Four years later Wilkes was returned as member for Middlesex. He then surrendered to the Court of King's Bench and was sentenced to twenty-two months' imprisonment. In the following year he was again expelled from

Parliament, but was promptly re-elected by Middlesex. After Wilkes had been three times returned the Commons declared his opponent, Colonel Luttrell, elected. This claim of the Commons to dictate to the electors was keenly resented, and helped to develop a demand for Parliamentary Reform. Under the Rockingham ministry the record of the proceedings against Wilkes was expunged from the journals of the House.

Publication of debates.

Meanwhile Wilkes had become associated with another political contest. The opposition of the House of Commons to the publication of debates was originally due to a desire to prevent the king from interfering with freedom of speech. But it had been maintained long after this danger had passed. In 1771 Wilkes determined to bring the question to a head, and persuaded several London newspapers to publish accounts of Parliamentary debates. The House of Commons ordered the printers to attend at the bar of the House, and issued orders for the arrest of those who refused to come. Two of the printers were arrested within the precincts of the City, and the case came before the Lord Mayor and two of the City Aldermen (one of whom was Wilkes), who discharged the printers. Another printer, Miller, gave the messenger of the House into custody; and he was committed by the City magistrates for unlawful arrest. The Lord Mayor and Alderman Oliver, who were members of Parliament, were ordered to attend at the House of Commons, whither they were accompanied by enthusiastic crowds. They were committed to the Tower for a time, but in the end the House abandoned the effort to prevent the publication of debates, though for a long time no reporter was allowed to take notes in the House, and the Press Gallery was only added when the Houses of Parliament were rebuilt after the fire of 1837.

Pitt the first Prime Minister.

Pitt's accession to office in 1784 was an important step in the development of the Cabinet system. Pitt frankly claimed the position of Prime Minister, and by the dismissal of Lord Thurlow in 1792 asserted the principle that it was no longer open for ministers of the crown to retain office while acting independently of the leader of the ministry. For some time Lord Thurlow had occupied the position of a royal spy in a series of ministries; and his successor as Lord Chancellor, Lord Loughborough, took his place in this capacity during the remaining years of Pitt's first ministry.

The first eight years of Pitt's period of office were years of constitutional progress, though after the rejection of his proposals for disenfranchising rotten boroughs in 1785, he abandoned the attempt to carry through a reform of Parliament. But he established an audit of Government accounts, checked Parliamentary corruption and jobbery, and placed the national finances on a sound basis. Among the important Acts of these years, Fox's Libel Act of 1792 deserves mention as a step in the protection of personal liberty. By this Act, juries gained the right to give a verdict on law as well as fact in libel cases, thus reversing a decision of Lord Mansfield, that it was the province of the judge alone to determine the criminality of a libel. Events of recent years may well awaken the doubt whether the verdict of a jury is more certain to be free from political partisanship than the decision of a judge.

Fox's Libel Act, 1792.

Regency Bill, 1788.

To the student of constitutional history the Regency Bill of 1788 is of special interest. In that year George III. had his first attack of insanity, and it was necessary to make provision for a regency. The Prince of Wales was in close alliance with Fox and the Whigs, and would probably

have tried to place them in office if he had been able. Accordingly Fox claimed that the regency devolved by right on the Prince of Wales. But Pitt asserted that it was the business of Parliament to appoint a regent and define his powers, and secured an acknowledgment from the Prince of Wales that he "knew too well the sacred principles which seated the House of Brunswick on the throne of Great Britain ever to assume or exercise any power, be his claim what it might, that was not derived from the will of the people expressed by their representatives and their lordships in Parliament assembled." The way was thus cleared for Parliamentary action, but Parliament was not in session, and how was the necessary royal warrant for its meeting to be supplied? The difficulty was overcome by a convenient legal fiction, a commission being issued under the Great Seal appointing commissioners to summon Parliament. A bill was then passed by both Houses appointing the Prince of Wales as regent with limited powers, but before this time the king recovered. The precedent of 1788 was followed in 1810, when the king became permanently insane.

Pitt's resignation was connected with the Act of Union with Ireland, the details of which we shall consider in the next chapter. He had undertaken to deal with the question of Catholic disabilities as soon as the Act of Union was passed. But his plans were betrayed to the king by Lord Loughborough, and Pitt found himself confronted by the danger of a break-down of the king's health if he pressed the matter. He therefore took the only alternative of resigning, in March 1801. Addington, a personal friend of the king, became Prime Minister, and in constituting his Cabinet he declined to assent to Lord Loughborough's claim to be included. "The number of

Resignation of Pitt, 1801.

the Cabinet," he explained, "should not exceed that of the persons whose responsible situations in office require their being members of it." This constitutional principle has ever since been observed. After three years of office Addington resigned in May 1804, the need of a stronger hand on the helm being urgent in view of the renewal of war with France. In consideration of the king's declining health, Pitt, who now resumed office, undertook not to raise the Catholic Emancipation question. But in January 1806 Pitt died, and a composite "Ministry of All the Talents" took office, with Fox as Foreign Secretary. The ministry was weakened by the death of Fox in September 1806, and in the following year alarmed the king by raising the Catholic Emancipation question in an Army and Navy Service Bill. He demanded a pledge from the ministry that the question should not be raised again, and on their refusal he exercised for the last time the royal power of dismissal. It was George III.'s last triumph over the Whigs. A Tory ministry, under the successive leadership of the Duke of Portland, Perceval and Lord Liverpool, held office till the end of the reign.

CHAPTER XVII.

THE SCOTTISH AND IRISH ACTS OF UNION

THE eighteenth century opened with the Parliamentary union of England and Scotland, it closed with the Parliamentary union of the United Kingdom with Ireland.

The accession of James I. might only have linked Scotland and England in the same way that the accession of George I. linked England and Hanover. That it did more was due to a decision of the law courts in what is known as Calvin's case, or the Case of the *Post Nati*. The details of the case are of no importance. It turned on the right of Calvin, an infant born in Scotland after James had come to the English throne, to hold land in England, which no alien could do. The judges decided that every Scotchman born after James's accession to the English throne had the rights of an English citizen. But this decision did not cover the right to trade with the English colonies, which the Navigation Acts prevented the Scots from sharing. Calvin's case, 1606

The Scottish Parliament—a very ineffective body—lasted on till the end of the seventeenth century. Fortunately for both countries, James II.'s misgovernment in Scotland made him as unpopular there as he was in England, and the Scottish Parliament followed the example of England in offering the crown to William and Mary, going even a

stage farther than England by declaring that James II. had *forfeited* the crown.

The chief barrier to union between the two countries lay in the suspicion of the Scots, that such a union might endanger the Presbyterian system and the local laws and customs of their country. William III. was anxious to bring about a union, and his efforts were unexpectedly seconded by the failure of a scheme for a Scottish colony on the Isthmus of Darien, in Central America. The scheme failed through the opposition of the Spanish authorities, and want of support from the English colonists and the Home Government. The immediate result was a strong feeling of bitterness on both sides. The English felt how easily they might have been drawn into a war with Spain on account of a scheme in which they had no voice, while the Scots threatened to dissolve the personal union of the two kingdoms after the death of Queen Anne. Matters were in this condition when William died, and in 1703 the Scottish Parliament passed a Bill of Security, reserving the right to refuse the successor named by the English Act of Settlement "unless there should be such forms of government settled as should fully secure the religion, freedom, and trade of the Scottish nation."

The Darien Scheme.

The English government replied by an Act known as Somers's Act, by which every native of Scotland not actually living in England should, after the end of 1705, be accounted an alien unless by that date the question of succession to the throne was settled. Orders were also given to repair the fortifications of the Border towns.

Both sides were, in reality, "manœuvring for position," and a new body of commissioners met to consider terms of union. In 1707 the terms were agreed on, and were embodied in an Act of Union passed by both Parliaments.

The Act of Union, 1707.

The Presbyterian system and the Scottish legal system was guaranteed, and a sum of nearly £400,000 was paid by England to equalize the national debt of the two countries. All commercial advantages of trade were thrown open to Scotsmen.

The united country was to be known as Great Britain, and to have one Parliament, to which Scotland was to send forty-five members, while sixteen Peers, elected for each Parliament, were to represent the Peers of Scotland in the House of Lords.

For a long time the Union remained unpopular in Scotland, and it is probable that the Jacobite risings of 1715 and 1745 were partly due to the fears of the Celtic Highlanders that their local independence would be lost. But the solid advantages that accrued to Scotland from the right to share in English trade, and the tact with which Walpole considered Scottish susceptibilities, gradually reconciled the Scots to it. In the building up of the nation and empire, Scotsmen have in the last two centuries played a great and honourable part. There are some indications now of a desire in Scotland for a larger measure of local self-government, but no racial hostility separates the two parts of Great Britain.

Before the Act of Union Scotland occupied the position of an independent nation, but the position of Ireland had for centuries been practically that of a conquered nation held down by the sword. In the later Middle Ages a Parliament was developed among the English residents in the Pale (a name given to the district around Dublin where English authority was recognized). In 1495 this Parliament passed Poyning's Law, by which it was declared that all laws passed in England up to that time were to be regarded as in force in Ireland, and that no bill could be

English authority in Ireland.

introduced into the Irish Parliament without the sanction of the English Council. The native Irish were thus, without any consent on their part, placed under the authority of the Council in England. After the Reformation, Roman Catholics were gradually disabled from holding any offices of state in Ireland, and after the Revolution of 1688 they were prohibited from sitting in Parliament or voting for members. The Irish Parliament thus represented only a very small minority of the people of Ireland, as the attempt to force the reformed religion on Ireland had been a complete failure. Early in the reign of George I. the British Parliament passed a statute declaring that it had full power to make laws for Ireland, thus depriving the Irish Parliament of even the semblance of independent authority.

With the fall of Lord North and the return of the Rockingham Whigs to power, a change of policy took place with regard to Ireland, and in 1782 Poyning's Act and the Act of George I. were repealed, thus leaving the Irish Parliament free to legislate for Ireland. But the Irish Executive continued to be appointed by the British ministry, and was able to maintain itself through the influence it could exercise over the Irish Parliament, through its command of pocket-boroughs, patronage, etc. The worst abuses that characterized the Parliamentary system in England in the eighteenth century were reproduced in an exaggerated form in Ireland. In 1793 Pitt induced the Irish Parliament to remove the franchise disqualification, and some other disabilities of Roman Catholics, though they were still disqualified from sitting in Parliament. But the grievances of the mass of the Irish people had little chance of being attended to by the unrepresentative Parliament, of which Grattan was now

The Irish Rebellion, 1798.

the most prominent leader. Encouraged by the French Revolution, and by hopes of help from France, the Irish peasantry rose in revolt in 1798. The rebellion was soon put down, but it served to bring home to Pitt the need for some change of the political arrangements in Ireland. He appears to have believed that the grievances of the Irish native population would have a better chance of being remedied by the British Parliament than by the existing Irish Parliament. He therefore determined to effect a union, hoping to be able to follow this by a measure of Catholic Emancipation, and by other remedial measures.

The chief opponents of union were the owners of pocket-boroughs, who regarded the proposal as an attack on their property. After a resolution in favour of union had been rejected by the Irish House of Commons in 1799, Castlereagh, the chief secretary to the Lord-Lieutenant, opened negotiations with the borough-owners, of whom he was able to bribe a sufficient number to secure a majority for the union in the following year. A sum of £1,200,000 was set aside to compensate the owners of pocket-boroughs at the rate of £7500 per borough.

The Act of Union, which was passed by both Parliaments in 1800, gave Ireland one hundred members in the House of Commons of the united Parliament, and twenty-eight Peers, elected for life from the Irish Peers, in the House of Lords. The number of Irish Peers was to be gradually reduced till it fell to a hundred, and any Irish Peer not elected to the House of Lords might sit for an English but not for an Irish constituency. The Protestant Episcopal Church was to remain the Established Church of Ireland, and its two archbishops and two of its bishops were to sit with the English bishops in the House of Lords.

The Act of Union, 1800.

The mass of the Irish people were neither consulted nor

considered in this political rearrangement. They had had no voice in the government of their country in the past, and they had no voice in it now. If Pitt had been able to follow up the union, as he intended, by granting Catholic Emancipation and other reforms, the union might have marked the dawn of a happier era for Ireland, but while the Catholic Emancipation proposals were under consideration, Lord Loughborough betrayed the matter to George III., who was persuaded into the belief that to assent to the removal of Catholic disabilities would be contrary to his coronation oath. In the precarious condition of the king's mental health Pitt feared that any attempt to press the matter might lead to a recurrence of insanity, and his only possible course was therefore to resign office, leaving the remedial measures, by which he hoped to bind the two nations together, unachieved.

Catholic Emancipation.

Catholic Emancipation was postponed for nearly thirty years, largely through the influence of George III. and of his successor. In 1828 O'Connell, a Roman Catholic, was returned for County Clare, and determined to attempt to take his seat. The feeling in Ireland was so strong that the ministers of the crown felt obliged to yield, and accordingly in 1829 Roman Catholics were admitted to Parliament. A concession that might have done much to propitiate Irish opinion if made thirty years before, was wrested from a reluctant Parliament by fears of an armed rising.

O'Connell now became, for fourteen years, the leader of an agitation for the repeal of the Act of Union. The agitation culminated in 1843, when the prohibition by the Government of a meeting that O'Connell had intended to hold obliged him to choose between submission and armed resistance. He declined to encourage rebellion, and the

agitation collapsed, much as the Chartist agitation collapsed in 1848. O'Connell was convicted of high treason, but his conviction was set aside on appeal by the House of Lords. After his death in 1847, and an unsuccessful attempt at rebellion by the "United Irishmen" in 1848, the repeal agitation died out for a time.

One of the grievances felt by the majority in Ireland was the maintenance of the Protestant Church as the Established Church of the country, and in 1868 Mr. Gladstone determined to take up this question, and carried a resolution in favour of Irish disestablishment. In the following year a dissolution brought him into office, and a bill was then passed disestablishing the Irish Church and confiscating the greater part of its revenues. The majority of the House of Lords was strongly opposed to the bill, and a political crisis might easily have arisen if the Queen had not used her influence, through Archbishop Tait, to induce the Peers to give way. The bill was carried by a majority of 33 on its second reading, thirty-six Conservative Peers voting with the Liberals from a patriotic desire to avoid a constitutional deadlock. But differences arose with regard to amendments proposed by the Lords, and it was only with great difficulty that a compromise was arrived at that both parties could accept.

The Disestablishment of the Irish Church, 1869.

About the same time that this breach was made in the Act of Union a fresh agitation for the repeal of the Act began. The Home Government Association, which afterwards became the Home Rule League, was founded in 1870, and in 1874 it was represented in Parliament by nearly sixty members, led by Mr. Isaac Butt. Three years later Mr. Parnell began to show how much a small but determined party could do to obstruct the business of Parliament. In 1886, influenced by the striking results of the

Home Rule.

Bill of 1886. first election in Ireland under the new and wider franchise, Mr. Gladstone determined to take up the question of Home Rule—a decision that led to a break-up of the Liberal party, a number of important members seceding and forming a Liberal Unionist party under the leadership of the Duke of Devonshire and Mr. Chamberlain. Mr. Gladstone's first Home Rule Bill provided for an Irish Parliament of two "orders," one representative of the propertied classes, the other of the people generally. No Irish representatives were to sit in the Imperial Parliament, but Ireland was to pay a certain sum for Imperial purposes. The exclusion of the Irish members was the feature of the scheme that provoked the strongest opposition, and the Bill was rejected on its second reading by a small majority. Mr. Gladstone appealed to the country, but was defeated, and a Conservative ministry came into office.

Bill of 1893. In 1892 Mr. Gladstone returned to office, and brought in a second Home Rule Bill in the following year. The chief change from the earlier scheme was that the Irish members were now retained, but were only to vote on Imperial matters. The practical difficulty of this arrangement led to a modification, by which Ireland was to be represented by eighty members with full rights of voting on all questions. In this form the Bill was passed by the House of Commons, but it was rejected in the Lords by an immense majority. Unwilling to sacrifice the rest of his legislative programme, Mr. Gladstone decided not to appeal to the country, but in 1895, a year after he had retired from the leadership of the party, the Liberal ministry was defeated, and a General Election brought the Unionists into office with a majority of over 150.

In view of the serious difficulties that present themselves in working out any scheme of self-government for one part

of the United Kingdom alone, and of a growing desire in Scotland and Wales for local self-government, not a few statesmen of both parties are inclined to look for the solution of the Irish problem in a general scheme of devolution that shall leave the Imperial Parliament free to deal with Imperial questions, while local Parliaments take over the settlement of purely local questions. These local Parliaments might consist of the members elected to the Imperial Parliament from each "nation"; so that the Scottish members of Parliament would attend at Westminster in the spring as part of the Imperial Parliament, and meet in Edinburgh in the autumn for local purposes. Devolution.

The most serious difficulty in the way of any such scheme is the size of England, which could hardly be dealt with as a whole, and yet does not very conveniently admit of division. A possible solution would be the revival of the ancient Anglo-Saxon divisions of Wessex, Mercia, Northumbria, and East Anglia. All thoughtful men are rightly jealous for the supremacy of the Imperial Parliament, but the congestion of business in Parliament may do much to reconcile that body to the delegation of subordinate powers to local assemblies, and the setting free of Parliament from purely local interests would be a step towards that Imperial Federation of which we shall say more in a later chapter.

CHAPTER XVIII

THE "CONSTITUTIONALIZING" OF THE MONARCHY

One of the most important constitutional changes of the nineteenth century has been the removal of the sovereign from the arena of political contest. It is now an accepted convention of the Constitution that the king belongs to no party, and that his name must not be introduced into political controversies. The idea, implied in the phrase "His Majesty's opposition," that both parties are acting in the interest of the crown, cannot be said to have been thoroughly established till after the accession of Queen Victoria.

Ministerial responsibility.

But if ministers are to accept full responsibility for the official policy of the crown, it follows that they must have full control over that policy, though it is their duty to explain fully to the sovereign the course they intend to pursue, and to give careful consideration to any advice that he may offer. "Though decisions must ultimately conform to the sense of those who are to be responsible for them, yet their business is to inform and persuade the sovereign, not to overrule him."[1] The change may be expressed by saying that in the seventeenth century the ultimate responsibility for government rested with the

[1] W. E. Gladstone.

sovereign, the ministers of the crown forming a body of expert advisers whom he was bound to consult, while in the nineteenth century the actual responsibility rests with the ministers of the crown, the sovereign being an expert adviser whom they are bound to consult. The sovereign has never formally lost the constitutional right to dismiss his ministers, but the right has not been exercised since the time of George III.,[1] and is very unlikely to be exercised again.

Right of dissolution.

In the exercise of the royal prerogative the sovereign is now guided by the advice of his ministers, who in their turn are responsible to Parliament. This is true, for example, of the right of dissolving Parliament. Even as late as the early years of the reign of Queen Victoria the idea was still prevalent that by assenting to a request of a Prime Minister for a dissolution of Parliament the sovereign gave an official expression of approval of the policy of the minister. But it is now a recognized right of a Prime Minister defeated in the House to choose between resignation and an appeal to the electors. Circumstances might conceivably arise—such as a defeat of a ministry soon after a General Election—that would justify the sovereign in refusing to agree to a dissolution of Parliament, but "even in this case, whoever was sent for to succeed must, with his appointment, assume the responsibility of this act, and be prepared to defend it in Parliament."[2] Recent events have shown that the creation of Peers is to be regarded as part of the royal prerogative for the exercise of which the Cabinet must be prepared to accept responsibility.

As we have seen, George III. acted as an avowed party leader, and his successor made no secret of his partiality

[1] Lord Melbourne was dismissed in 1834 at his own suggestion.

[2] Lord Aberdeen in 1858.

for the Tory party and his objection to Parliamentary Reform. If he had lived a few years longer, this objection would probably have led to a constitutional crisis that might have been fatal to the monarchy. The accession of William IV., a bluff, amiable monarch of liberal sympathies, saved the situation and enabled the Reform Act of 1832 to be carried through by constitutional means.

Queen Victoria, 1837-1901

The death of William IV. placed a woman on the throne for the fourth time in our history. The youth and high character of the new sovereign did much to restore the prestige of the monarchy, which had been seriously shaken in the previous reigns. "Since the century began there had been three kings of England, of whom the first was long an imbecile, the second won the reputation of a profligate, and the third was regarded as little better than a buffoon."[1] It can scarcely be wondered at that respect for the monarchy was at a low ebb in 1837.

In Lord Melbourne, who was Prime Minister at the time of her accession, the Queen had an adviser able to restrain her natural impetuosity within the limits of constitutional usage. Her close friendship with him naturally led her to sympathize with the Whig party, and so created some difficulty when the swing of the pendulum obliged Melbourne to resign, and brought the Tories under Peel into power. Peel's desire to change the ladies-in-waiting, who were all of the Whig party, threatened at one time to develop into a serious constitutional question, but a reasonable compromise was arrived at. Peel's kindly tact and consideration soon won the Queen's esteem, and his policy with regard to the Corn Laws had her warm approval.

[1] Lee, *Queen Victoria.*

The Civil List.

At the accession of Queen Victoria the separation between the national revenue and the personal revenue of the sovereign became complete. George III. had, in return for a Civil List, surrendered the hereditary revenues of the crown, and William IV. also gave up certain other sources of income, and received a "Civil List" of £510,000 a year. On the accession of Queen Victoria all properly national expenses were taken over by the State, and the "Civil List" was fixed at £385,000. The amount proved inadequate in the latter years of the reign, and the "Civil List" is now £470,000, to which must be added the revenues of the Duchy of Lancaster (about £60,000). The income from the hereditary revenues surrendered by the crown, mostly Crown Lands, now managed by the Commissioners of Woods and Forests, amounts to rather more than £450,000.

Sir Robert Peel has been described by Lord Rosebery as "the model of all Prime Ministers." He "kept a strict supervision over every department; he seems to have been master of the business of each and all of them." The growing complexity of the work of administration makes it impossible for a Prime Minister in the present day to keep the same intimate relation with all departments of government. As head of the Cabinet the Prime Minister is now obliged to accept responsibility for the departmental policy of his colleagues, without any possibility of detailed knowledge.

The Queen and Lord Palmerston.

The death of Peel in 1850 left Palmerston the most conspicuous figure in English political life. While opposed to Parliamentary Reform at home, Palmerston was strongly liberal in his foreign policy, and threw the influence of England into the scale on the side of what the Queen and Prince Albert regarded as revolutionary movements. The

Queen frequently complained that Palmerston carried out his policy without regard to her constitutional right to be consulted, and without affording her the information necessary for understanding it. Finally, in 1850, the Prince Consort drew up a memorandum explaining what the Queen claimed from her ministers:

"The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure, that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the crown, and justly to be visited by her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based upon their intercourse; to receive the foreign despatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off."

Palmerston promised amendment, but was dismissed a few months later for expressing approval of Louis Napoleon's *coup d'état* without any previous consultation with the Prime Minister and his colleagues. Before long he was triumphantly restored to power, but he succeeded in avoiding friction with the Queen, who claimed no right to dictate the foreign policy of her ministers, but only to be kept clearly informed what that policy was.

Mr. Gladstone on the authority of the crown.

In her relations with her ministers in the later years of her reign the Queen adhered strictly to the constitutional principle that the Prime Minister has the right to the confidence and support of the sovereign. In his *Gleanings*

Mr. Gladstone has explained the nature of the influence exercised by the sovereign over her ministers at this period of her reign.

"Although the admirable arrangements of the Constitution have now completely shielded the sovereign from personal responsibility, they have left ample scope for the exercise of a direct and personal influence in the whole work of government. The amount of that influence must greatly vary according to character, to capacity, to experience in affairs, to tact in the application of a pressure which never is to be carried to extremes, to patience in keeping up the continuity of a multitudinous supervision, and lastly, to close presence at the seat of Government; for in many of the necessary operations time is the most essential of all elements and the most scarce. Subject to the range of these variations, the sovereign, as compared with her ministers, has, because she is the sovereign, the advantages of long experience, wide survey, elevated position, and entire disconnexion from the bias of party. Further, personal and domestic relations with the ruling families abroad give openings, in delicate cases, for saying more, and saying it at once more gently and more efficaciously than could be ventured in the more formal correspondence and ruder contacts of governments."

"There is not a doubt that the aggregate of direct influence normally exercised by the sovereign upon the counsels and proceedings of his ministers is considerable in amount, tends to permanence and solidity in action, and confers much benefit on the country without in the smallest degree relieving the advisers of the crown from their individual responsibility."

These words of Mr. Gladstone remain true to day, and

help to account for the strong attachment to the monarchy that characterizes English life.

The only two directions in which the Queen claimed to exercise some independent authority were in regard to appointments in the Church, Army and Navy, and in regard to foreign affairs.

Influence of the crown on foreign policy.

In regard to the former of these, it is probable that less direct royal influence is now exercised, but the sovereign will always be able to exercise considerable influence over the foreign policy of the country, especially now that, by tacit agreement, foreign policy has been removed from the arena of party contest. But it is important to remember that the Cabinet accepts entire responsibility for the foreign policy of the nation. As late as the reign of George IV., Canning was obliged to remind the King that "it is my duty to be present at every interview between His Majesty and a foreign minister." If the sovereign pays official visits abroad he must, by constitutional usage, be accompanied by a minister of the crown, and any negotiations with foreign powers must pass through the hands of this minister. Even Queen Victoria's correspondence with foreign sovereigns, other than near relations, was shown to the Prime Minister or Foreign Secretary. But in this, as in other departments of government, the sovereign occupies the position of expert adviser of his ministers. He may powerfully support their policy, and the large share taken by the late king in fostering the *entente cordiale* with France illustrates the sphere of activity still open to the sovereign in this direction.

As the irremovable adviser of successive ministries, the sovereign can do much to secure the continuity of foreign policy, and to prevent our foreign relations from being at the mercy of any sudden impulse. The sovereign's right

to be consulted is an important safeguard for international peace.

As colonial affairs cease (as they are rapidly ceasing) to be matters of party controversy, a similar sphere of beneficent activity is opening for the sovereign in this direction. It is no slight part of the advantage of a constitutional monarchy that the sovereign is able to give prominence to those aspects of national life that have passed out of the arena of party contest and become the common inheritance of all.

Social influence of the monarch

Of the social influence of the monarchy this is not the place to speak in detail. The chief objection now urged against the monarchical system is that it ministers to what is called "the spirit of flunkeyism." But two considerations may be urged against this view. By providing a natural head of society, the monarchical system at least provides that the highest place in the social order shall not be won by low intrigue or vulgar display. And, again, in the person of the sovereign the union of social eminence and political service is maintained. The stability of any political system is endangered when privilege and responsibility—honour and service—are divorced from each other. The British sovereign is one of the most hard-worked public officials in the country. The days when the life of a king was divided between fighting and amusement are long past. It is as the servant of the nation that our sovereign now claims our loyalty and respect.

CHAPTER XIX

PARLIAMENTARY REFORM

THE student of Parliamentary history must sometimes wonder that the demand for Parliamentary Reform did not arise long before the latter part of the eighteenth century. But while England remained mainly an agricultural community the House of Commons did, as a matter of fact, represent very fairly the interests of the people. The country squire, closely in touch with the people of his own county, and the clever young man nominated by the patron of a "pocket-borough," were exactly the kind of people who would probably have been elected if the England of the days of Walpole had had a wide franchise. The demand for Parliamentary Reform began partly as an outcome of the struggle against Parliamentary corruption and the dangerous strength of the executive, and partly as a result of these industrial changes of the latter part of the century that gradually transformed England north of the Trent from a sparsely populated agricultural district to a great area of manufactures and urban life. Towns in the south that had decayed into villages, continued to return members, while great cities like Manchester, Birmingham, Leeds, Sheffield and Bradford were unrepresented.

The unreformed House of Commons.

In 1710, the qualification for county members had been fixed at £600 in land, and for borough members £300 a year. In practice these qualifications were systematically evaded, but they were not actually repealed till 1858.

The electors in counties were the old forty-shilling freeholders. In boroughs the franchise varied greatly—in some cases all ratepayers voted, in others only freemen, or the owners of particular houses, or "potwallopers." In many smaller boroughs the total number of electors amounted to a mere handful. It is said that in 1780 six thousand electors returned a majority of the House of Commons. This condition of things naturally gave great landowners immense influence. At the end of the century it was computed that two-thirds of the House consisted of nominated members. Seats were sold in much the same way as (to our disgrace as a Church) presentations to benefices still are. When Pitt proposed in 1785 to buy out the owners of certain decayed boroughs, he estimated the value of a borough at £7000. Immense sums were often spent on elections, especially in the counties, where the forty-shilling freeholder often regarded his vote as a source of income.[1] The electorate.

The Whig party regarded these facts as justifying a measure of Parliamentary Reform. But the long struggle with France, and the period of reaction that followed, kept the question in the background, though attempts were made from time to time to bring the matter before Parliament, and the Reform party won a minor victory in 1821 in the disenfranchisement of the borough of Grampound.

Meanwhile the agitation for Reform developed outside Parliament. In 1780 a "Society for Constitutional Information" was started, to advocate a programme practically Rise of Radical party.

[1] For further particulars with regard to the House of Commons before 1832, see Porritt, *The Unreformed House of Commons*.

identical with that of the Chartists in the following century. Major Cartwright, who started this society, had sacrificed his career in the army because he would not fight against the American colonists. He outlined his Reform programme in a pamphlet entitled *The Legislative Rights of the Commons Vindicated*. Cartwright was the earliest leader of a new school of politicians who became known as Radicals, because their proposals went to the root of our political system. Their advocacy of Parliamentary Reform was based not only on the actual inequalities of the existing system, but also on the idea that the franchise was a right of which no adult citizen ought to be deprived. A second society, the "Friends of the People," was founded ten years later, with Grey and Burdett among its members.

In 1830, after nearly fifty years of almost unbroken exclusion from office, the Whigs returned to power under Lord Grey as Prime Minister. In early life Grey had been an ally of Fox, because, like many members of the landowning class, he was opposed to Pitt. He succeeded to his father's peerage in 1807, and took little part in political life till 1827, when he appeared as almost the only advocate of Parliamentary Reform in the House of Lords. He was a thorough Whig, and had little in common with the "Radical" advocates of a democratic system.

The struggle for reform, 1831-1832.

Lord John Russell introduced the first Reform Bill of the new ministry in 1831, and though the second reading was carried in March by a majority of one, the Bill was defeated in committee. At Lord Grey's request the King dissolved Parliament, and a strenuously fought election returned a large Whig majority. The second Reform Bill was passed by a majority of a hundred, but rejected by the House of Lords. By this time a strong feeling in favour of Reform had awakened among the people, and riots and

disturbances took place in various parts of the country. "The Bill, the whole Bill, and nothing but the Bill" became the rallying cry of the supporters of Parliamentary Reform. The third Reform Bill was introduced at the end of the year, and read a second time by the Lords. But when an attempt was made to amend the Bill in committee, by postponing the disenfranchising clauses, the Cabinet resigned. The Tory leaders were unable to undertake to form a ministry, and the king was therefore obliged to recall Lord Grey, to whom he gave written permission to create "such a number of Peers as will be sufficient to ensure the passing of the Reform Bill, first calling up Peers' eldest sons." The Duke of Wellington, at the king's request, used his influence to persuade the Peers to abandon a resistance that could only be useless, and the Reform Act was passed in July 1832.

The practical effect of this Reform Act was to transfer supreme political power from the Peers and great landowners to the middle class. The bond between the two Houses was broken, and the House of Commons became conscious of a new independence—an independence not menaced as yet by the influence of external party organizations.

The Reform Act disenfranchised fifty-five boroughs, and reduced thirty more to one member, and one four-member borough to two. The 143 members thus available were given to the largest unrepresented boroughs, and to the most populous counties. The Reform Act of 1832.

In the boroughs the £10 householder became the unit of the electoral system, while in the counties £10 copyholders and long leaseholders, and tenants-at-will paying £50 rent, were added to the old forty-shilling freeholder. The total number of electors enfranchised by the Act was rather under half a million.

But the real importance of the Reform Act is not in these detailed changes, but in the fact that the old order of things had been swept away. Though Lord John Russell, a typical representative of the Whig point of view, asserted that the Act of 1832 was to be regarded as "final," it was obvious that as soon as the unenfranchised classes began to claim the right to vote, the artificial limits imposed by the Act of 1832 would have to give way.

The years that followed 1832 were marked by several important measures of a popular kind, such as the new Poor Law of 1834 and the Municipal Corporations Act of 1835. These years were also the years of the rise of the Chartist movement—a movement developed by the disappointment felt by the working-class, when they realized that the Reform Act of 1832 had transferred power not to them but to the middle class, whose interests often seemed antagonistic to theirs.

Chartist movement.

The Chartist movement, like the later Social Democratic movement, was based on the idea that in order to secure social and economic reform the workers must first capture the political machine. The demands of the Charter—universal manhood suffrage, annual Parliaments, abolition of property qualifications for members, equal electoral districts, payment of members, and the ballot—were all designed to this end.

The purpose of the London Working Men's Association, out of which the Chartist movement developed, was defined by Lovett as the creation of "a moral, reflecting, energetic public opinion, so as eventually to lead to a gradual improvement in the condition of the working-classes without violence or commotion." But after a time some of the more ardent spirits among the leaders grew weary of the slow process of political education, and

so Chartism broke up into two parties—the party that desired to move forward by constitutional means, and the so-called "physical force" Chartists who were prepared to talk about violence.

The abolition of the Corn Laws and other reforms of the years between 1840 and 1846 did something to meet the immediate needs of the workers, and Chartism declined after the critical year 1848.

Though several half-hearted attempts were made between 1850 and 1865 to carry Reform Bills,[1] the influence of Lord Palmerston, and the absence of any urgent demand from outside, discouraged the Liberal party from taking up the question with any real keenness. But Lord Palmerston's death in 1865 brought forward Mr. Gladstone, a strong supporter of Reform, as leader of the Liberal party in the House of Commons, and about the same time John Bright had succeeded in arousing a keener interest in the question among the artisans of the great English towns. In 1866 Mr. Gladstone brought forward a Reform Bill which failed to satisfy a considerable section of his own party—the "Adullamites," as they were called[2] of whom Robert Lowe became the leader. On the resignation of Lord Russell's ministry Mr. Disraeli succeeded as Prime Minister, and induced his party to take up the Reform movement, believing that the extension of the franchise to the artisan population might be made to serve the interests of the Conservative party. His proposals, extensively amended, finally took shape in the Reform Act of 1867. By this Act thirty-five boroughs were partly and eleven wholly disenfranchised. These members were allotted to Reform Act of 1867.

[1] As Mr. Gladstone said in introducing his Reform Bill in 1866, "The limbo of abortive creations is peopled with the skeletons of reform Bills."
[2] See 1 Samuel xxii. 1-2.

the large towns and counties. An attempt was made to secure the representation of minorities by creating three-member constituencies, in which each elector had only two votes, but in Birmingham and elsewhere careful political organization rendered the scheme nugatory.

The most important provisions of the Act were those in which the borough franchise was extended to all householders, and to lodgers paying £10 a year, and a £12 occupation franchise added in the counties. These provisions added over a million citizens, chiefly among the artisans of the towns, to the electorate.

The idea underlying the Reform discussions in this year was, that it was the business of the State to extend the privilege of the franchise to properly qualified classes. The Radical view of the vote as a right belonging to all citizens had hardly yet entered the sphere of practical politics. In 1864 Mr. Gladstone caused great offence to Lord Palmerston and others of his colleagues by laying down the democratic doctrine, that "every man who is not presumably incapacitated by some consideration of personal unfitness or of political danger is morally entitled to come within the pale of the Constitution."

Reform Act of 1884.

Seventeen years later the third Reform Act of the century extended the franchise to the country labourer, and practically abolished the distinction between borough and county members, dividing the country into single-member constituencies, except for a few boroughs that retained two members. It had been obvious that the household franchise adopted for the boroughs in 1867, would have to be extended to the counties, and Mr. Gladstone pledged in 188[illegible] that the time for doing this had arrived. The history of the Act is interesting, because it led to one of those contests between the two Houses that

have been a feature of the constitutional history of the last century. The Bill for the extension of the franchise in the counties was rejected by the House of Lords, on the ground that it did not include a scheme of redistribution, Mr. Gladstone having decided to take this question in a separate bill. Mr. Gladstone declined to dissolve Parliament at the demand of the Peers, and a long political crisis followed, in which the Queen played an important part as mediator between the two parties. An arrangement was finally reached, by which Mr. Gladstone agreed to communicate to the leaders of the opposition the main principles of his redistribution proposals. The Franchise Act was then passed, and the Redistribution of Seats Bill followed in due course. By this Act nearly two million voters were added to the register.

Several changes of minor importance have taken place in the constitution of the House of Commons during the last century. In 1801 an Act of Parliament was passed to settle the doubtful question of the eligibility of ministers of religion. By this Act clergy of the Established Churches of England and Scotland were declared ineligible. But this disqualification does not apply to ministers of Nonconformist bodies. Roman Catholics were admitted in 1829, and in 1856 the words of the oath were altered so as to enable Jews to become members without being obliged to declare their allegiance "on the true faith of a Christian." Quakers had already, by an Act of 1833, secured the right to make an affirmation in place of an oath, and after the controversy that arose through the election of Mr. Bradlaugh in 1880, the right to affirm was extended to all members, and thus all religious disabilities were removed.

Parliamentary disqualification removed.

With the extension of the franchise, the fear that voters might be penalized for their opinions led to a demand for

The Ballot of 1872.

the method of secret voting known as the ballot. Proposals for the introduction of the system were several times passed by the House of Commons, but were rejected by the House of Lords. Finally, in 1872, the Ballot Act was passed for a year, and is annually renewed, with a number of other Acts, by the Expiring Laws Continuance Act.

Profoundly as the Reform Acts of the last century have changed our political arrangements, there is still much to be done before our representative system can be regarded as even approximately adequate. The Liberal party is pledged to the abolition of plural voting. But with the principle of "one man one vote" ought to go the corresponding principle of "one vote one value." The successive redistributions of the nineteenth century have respected historic associations, but the time will come when such considerations must give way to a more equitable distribution of seats. There is a good deal to be said for the American system, under which a redistribution, on a purely numerical basis, follows each census. The over-representation of Ireland[1] will undoubtedly be dealt with in any scheme of Home Rule that may be proposed.

Franchise problems.

The electoral changes of the last century, and various judicial decisions based on them, have rendered the electoral system very complicated, and it is now proposed to get rid of these complications by the adoption of manhood suffrage, with a simple residential qualification, sweeping away all property qualifications altogether. The bill may be amended so as to extend the franchise to women on the same democratic basis. The Conciliation Bill only proposes to enfranchise women householders.

The problem of the representation of minorities, or, as it

[1] Ireland has one member for every 44,000 of population, England one for every 67,000.

is sometimes called, proportional representation, is a very difficult one. It is obvious that under the present system something like half the electorate may be unrepresented in the House of Commons. Various proposals have been made for rectifying this, but they are all liable to the objection that they complicate the electoral machinery. A distribution of seats strictly proportioned to population would ensure that the majority in Parliament represented a corresponding majority in the country, and perhaps that is as much as we can hope to secure.

The elaborate efforts expended by all political parties in bringing electors to the poll are a very unsatisfactory feature of our political life. A remedy might be found in the arrangement recently adopted in Austria, where every elector is bound by law to present himself at the poll. At least it would help to bring home to electors the fact that the franchise is not only a privilege, but also a responsibility. It is not very creditable to our citizenship to hear defeated candidates ascribing their failure to lack of motor cars!

The question of the enfranchisement of women has come prominently to the front in recent years. Now that military service is no longer the basis of political right, it is difficult to see any logical reason for retaining a sex disqualification in the Parliamentary franchise that has been, to a certain extent, abandoned in the municipal franchise. One of the most serious practical difficulties is that if the franchise qualification for women were made the same as for men—and no other system can be more than a temporary makeshift—women would form an actual majority of the qualified electors. Under these conditions it would be impossible to resist the claim of women to the right to sit in Parliament. It may be thought that the

Female suffrage

presence of women in the House of Commons would be an advantage, but the successful working of the Parliamentary system depends greatly on the informal intercourse of members in the Lobby and the smoking-room, and it is not easy to see how this kind of *camaraderie* could be maintained in a mixed assembly.

The payment of members has now become a *fait accompli*, and the payment of returning-officers' expenses will probably be taken over by the State in the near future. As these changes will be likely to lead to a great increase in the number of candidates, it will almost certainly be necessary to introduce into the electoral system some provision for a second ballot. The question of electoral corruption is also likely to engage the attention of our legislators in the near future. The amount that a candidate can spend in the actual election is limited by statute, and varies according to the size of the constituency. This amount might, with advantage, be greatly reduced. But expenditure by a candidate in "nursing the constituency" is a discreditable form of indirect bribery over which the State has no control; and the attempt to limit the amount expended in elections has been largely evaded by the action of organizations acting independently of the candidates. The immense expense involved in a petition also gives a great advantage to the candidate possessed of financial resources. Even against direct bribery it is almost impossible to take effective action if both parties are equally guilty.

Electoral corruption.

At present elections are regulated by the Corrupt and Illegal Practices Act of 1883. By this Act electoral offences are divided into corrupt and illegal practices. The former class includes bribery, treating, and personation, and any of these offences, if proved against the candidate

or his agents, disqualifies him permanently from representing that constituency, and for seven years from representing *any* constituency. Minor irregularities, not involving moral turpitude, are classed as illegal practices, and if these are trivial the judges may grant relief from penalties. If serious, they invalidate the election.

At the beginning of the Stuart period, in the case of *Goodwin* v. *Fortescue*, the House of Commons successfully claimed the right of deciding contested election returns. Such election cases were at first tried by a select committee, then by a permanent Committee of Privileges and Elections. But after 1672 election cases were decided by a committee of the whole House, and the decision was given not on judicial but on political grounds. It was a defeat of the Government in the Chippenham election petition that led to the resignation of Walpole. In 1770 Grenville's Act tried to remedy this state of things by establishing a committee of fifteen, chosen by a rather elaborate process, to hear election cases. But political influences still predominated, and at last, in 1868, the hearing of election petitions was transferred to two judges of the High Court of Justice, who report to the Speaker the decision at which they arrive—such decision to be one in which they both concur. In cases where general corruption is proved to exist, a constituency may be disenfranchised by the Speaker declining to issue the necessary writ for a fresh election. Trial of contested election returns.

The growing pressure of business in Parliament constitutes a problem which is at present exercising the minds of statesmen. Whether a solution will be found in a general scheme of "devolution," or in a fuller development of the committee system, as it exists in our local government, it is impossible yet to say. Autumn sessions are now Pressure of business.

becoming far too frequent, for they deprive the ministers of the crown of the one opportunity they have for clearing up the arrears of their departments and drafting the legislation for the following session, while they deprive members of Parliament, not only of needed rest, but also of the opportunity of cultivating friendly relations with their constituents.

The tie of local relationship that once existed between the knight of the shire or the burgess of the borough and his constituents, has now almost entirely vanished, a considerable proportion of members of Parliament having no residential qualification in the district that they represent. An autumn free from Parliamentary business does at least provide an opportunity for the member to spend some time among his constituents, and become acquainted with local conditions and needs.

The growing pressure of business is affecting the constitutional system in another way, by giving the Executive almost complete control over the legislative work of Parliament. As a consequence, the rights of private members are mercilessly sacrificed to the exigencies of government business, and party loyalty is enlisted to carry through a legislative programme in which the House of Commons, as such, has had very little share.

The reassertion of the rights of private members may perhaps be one result of the political apprenticeship that many of our members of Parliament now serve in local representative bodies. Just as the English local government of the sixteenth century trained up a body of men, who were the leaders of Parliamentary life in the period that followed, so the local government of the present day is training up a body of men who are likely to become the leaders of the Parliamentary life of the future. Will such

The future of the House of Commons.

men, in the interest of practical efficiency, lay violent hands on the Parliamentary traditions that have been the slow growth of centuries, or will the effectiveness of the Parliamentary machine be improved by a gradual process of change?

It is impossible to resist the impression that the House of Commons is passing through a period of transition from which it will emerge in a form almost unrecognizably different from that in which it has played its part in the history of the last two centuries. The political instinct of the British people has been able in the past to adapt ancient institutions to the needs of other times, and though the process of change will be difficult, and not free from peril, we may confidently hope that the same political instinct will find a way to meet the needs of the future, not by the method of revolution, but by a process of evolution. For it is the qualities of continuity and adaptability that give to institutions their organic character.

CHAPTER XX

LORDS AND COMMONS

Constitution of the House of Lords.

In earlier chapters I have, as a rule, omitted all reference to the relations of the two Houses of Parliament to each other, as it seemed better to deal with this matter in a separate chapter. But before doing so it may be well to say something about the constitution and work of the House of Lords. And first, as to its numbers. At the beginning of the reign of Henry VIII. it contained 48 ecclesiastical members (bishops and mitred abbots) and 36 lay Peers. With the dissolution of the monasteries 20 mitred abbots disappeared, and the number of the bishops has ever since remained the same (26), except for the addition, from 1800 to the disestablishment of the Irish Church in 1869, of four Irish bishops. The two archbishops, and the bishops of Durham, Winchester, and London, are always members of the House; the other bishops succeed as vacancies arise, in order of consecration. They constitute the only non-hereditary element in the Upper House (excepting the four "Law Lords"). The number of secular Peers has grown steadily. The Tudors added about forty, and by the Restoration the number had risen to about 110. A century later it was about 200. During the reign of George III. 116 new Peers were created, a considerable proportion of

them by Pitt during the latter part of the reign, and the Irish Act of Union added 28 more. During the nineteenth century nearly 400 Peers have been created, so that, allowing for peerages that have lapsed, the total number of hereditary Peers in the House of Lords is over 550.

The strictly hereditary character of a peerage was asserted by the House of Lords in 1856, when a life-peerage was conferred on Sir James Parkes with a view to strengthening the judicial element in the House. A committee of the House decided that the right of the crown to create life-peerages had lapsed by disuse, and Sir James Parkes was then created a hereditary Peer as Lord Wensleydale. It has seemed to many people a matter for regret that the crown should have lost the power of strengthening the Upper House by the addition of men of eminence, who are precluded by their financial position from accepting a hereditary peerage.

The legal powers of the House of Lords were inherited from the old *Magnum Concilium*. The House remains still the final Court of Appeal for all civil business. By an Act of 1876 this appellate jurisdiction was regulated, provision being made for the appointment of four Lords of Appeal in Ordinary. In addition to these, the Lord Chancellor and any other Peers who "hold or have held high judicial office" take part in the judicial business of the House. No case can be heard unless at least three lords are present. Legally, any member of the House of Lords can take part in its judicial business, but in practice no non-legal Peer ever does so. The House of Lords as a judicial body is, therefore, quite a different body from the House of Lords as a legislative body, though they bear the same name and sit in the same chamber. Judicial powers.

Turning now to the relations between the Houses, we

Lords and Commons in (1) legislation,

find the Lower House gradually securing legislative equality with the House of Lords. At first, laws were made by the king with the *assent* of the Peers at the *request* or *petition* of the Commons. But in the Lancastrian period the Commons secured the right to present bills in place of petitions, and since then Acts of Parliament are made by the king "with the advice of the Lords, Spiritual and Temporal, and Commons in this present Parliament assembled."

(2) taxation.

The Commons and the Lords at first voted their taxes independently of each other. But in the fourteenth century it became usual for the two Houses to make their grants together, so that after 1395 the usual formula for money grants was "by the Commons with the advice and assent of the Lords Spiritual and Temporal." In 1407 the Commons protested against an attempt of the Lords to inaugurate a money grant, "saying and affirming that this was in great prejudice and derogation to their liberties." Henry IV. agreed that grants, when agreed upon by both Houses, should be reported by the Speaker of the Commons. Since that time, the initiation of all money grants has been claimed as a right by the House of Commons.

It was not till after the Restoration that the question of money grants arose again. The events of the previous period had made the House of Commons jealously conscious of its privileges, and when, in 1661, the House of Lords passed a Bill for paving and repairing the streets of Westminster, the Commons rejected the Bill on the ground that "no bill ought to begin in the Lords' House which lays any charge or tax upon any of the Commons." After a controversy of months' duration a Bill of the same import was passed by the Commons and accepted, under protest, by the Lords.

Ten years later, when the House of Lords attempted to

amend Bills of Supply, the Commons affirmed "that in all aids given to the king by the Commons the rate or tax ought not to be altered by the Lords." A few years after this, another attempt by the Lords evoked a fuller statement of what the Commons regarded as their privileges. Amendment of Bills of Supply.

"All aids and supplies," they affirmed, "are the sole gift of the Commons, and all Bills for the granting of any such aids or supplies ought to begin with the Commons; and it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords." The Lords gave way under protest.

During the eighteenth century the relations between the two Houses continued harmonious. The reason of this was that the great Whig nobles, by their command of political patronage, were able to control the Lower House. But after the Reform Act of 1832, the harmony between the two Houses began to be broken by collisions.

Twice since then such collisions have occurred between the two Houses over financial questions. The first of these took place in 1860 in connexion with a proposal of Mr. Gladstone for the repeal of the Paper Duties. The proposal was rejected by the House of Lords, and Mr. Gladstone then induced Lord Palmerston to submit to the House of Commons a series of resolutions reasserting the rights of the Commons over taxation. The first asserted that "the right of granting aids and supplies to the crown is in the Commons alone." The second affirmed that the exercise of the power of rejection by the House of Lords "hath not been frequent, and is justly regarded by this House with peculiar jealousy as affecting the right of the Commons Paper Duties, 1860.

alone to grant supplies and to provide the ways and means for the service of the year." In the following year Mr. Gladstone embodied all the financial proposals of the year in one Bill, so that the Lords had to choose between passing and rejecting the entire scheme of finance of the year.

The last collision took place nearly fifty years later. when the House of Lords rejected the Budget of 1909, in order to compel the Government to submit their financial proposals to the electors. The Government was returned, though with a decreased majority, and the Budget was then carried through the House of Lords.

By the Parliament Act a money Bill, sent up from the Commons, if not passed by the Lords within a month, is to be presented for royal assent, and so to become law.

"Tacking." The rights of the Commons over finance are liable to abuse, as was shown at the end of the seventeenth century, when the Commons tried to secure the passage of non-financial proposals by "tacking" them on to Bills of Supply. In 1702 the Peers met this violation of constitutional propriety by a strong resolution "that the annexing any clause or clauses to a Bill of aid or supply, the matter of which is foreign to and different from the said Bill of aid or supply, is unparliamentary, and tends to destruction of the Constitution of the Government."

The problem of "tacking" has not since arisen between the two Houses, but with the recognition of the complete financial supremacy of the Lower House, the question of defining what constitutes a money Bill has become important. The Parliament Act gives the decision of this question to the Speaker, "who shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each session by the Committee of Selection."

Judicial questions.

The Restoration period was marked by two collisions between the two Houses in regard to the judicial rights of the Lords. The first of these occurred in the case of *Skinner* v. *The East India Company*, a case in which an Eastern merchant, Thomas Skinner, petitioned the crown for redress of certain grievances against the East India Company. The petition was referred to the House of Lords, and the Company then petitioned the Commons in regard to the matter. A quarrel arose between the two Houses which lasted for four years, and ended as it began. But the House of Lords has never since claimed to exercise original jurisdiction in civil cases.

The other case of dispute—*Shirley* v. *Fagg*—turned on the right of the House of Lords to hear appeals from the Court of Chancery—a right that the Upper House succeeded in retaining.

Legislative questions.

The chief cases of contest between the two Houses on questions of legislation—the Reform Act of 1832, the Irish Disestablishment question in 1869, the Franchise Bill of 1884, and the Home Rule Bill of 1892—have been dealt with in previous chapters. Though the number of Bills actually rejected by the House of Lords has not since this last date been very large, the strong predominance of one political party in the Upper House, and its non-representative character, have been felt as a grievance by the Liberal party; and in his last speech in the House of Commons Mr. Gladstone bequeathed to his party the task of redressing this grievance. The occasion of the speech was the consideration of certain amendments that the House of Lords had made in the Parish Councils Bill. After advising the House of Commons to agree with the amendments rather than lose the Bill he added: "We are compelled to accompany that acceptance with the sorrowful declaration

that the differences, not of a temporary or casual nature merely, but differences of conviction, differences of presupposition, differences of mental habit, and differences of fundamental tendency, between the House of Lords and the House of Commons, appear to have reached a development in the present year (1894) such as to create a state of things of which we are compelled to say, that in our judgment, it cannot continue. . . . The issue which is raised between a deliberative assembly, elected by the voice of more than six million people, and a deliberative assembly occupied by many men of virtue, by many men of talent, of course with considerable diversities and varieties, is a controversy which, when once raised, must go forward to an issue."

The retirement of Mr. Gladstone was followed, soon after, by the fall of the Liberal ministry, and by a long period of Unionist government. During this period the relations of the two Houses remained harmonious, but on the return of the Liberals to office in 1906 friction quickly arose. The controversy between the two Houses culminated in the rejection by the House of Lords of the Budget of 1909. The General Election that followed, resulted in the return of a majority in favour of the Government. Proposals were then submitted to the House of Commons for a limitation of the legislative veto of the Upper House. At this juncture the death of the king led to a general desire for a peaceable solution of the constitutional crisis, and a conference of leading members of both parties sat for some time, but failed to reach an agreement. The Government then recommended the dissolution of Parliament, and accompanied the recommendation with a memorandum which is of sufficient constitutional importance to deserve quotation in full.

The Parliament Act of 1911.

"His Majesty's Ministers cannot take the responsibility

of advising a dissolution unless they may understand that, in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, His Majesty will be ready to exercise his constitutional powers, which may involve the prerogative of creating peers, if needed to secure that effect shall be given to the decision of the country. His Majesty's Ministers are fully alive to the importance of keeping the name of the king out of the sphere of party and electoral controversy. They take upon themselves, as is their duty, the entire and exclusive responsibility for the policy which they will place before the electorate. His Majesty will doubtless agree that it would be inadvisable, in the interests of the State, that any communication of the intentions of the crown should be made public unless and until the actual occasion should arise."

The General Election left the relation of political parties unchanged, and the Bill for the limitation of the veto was then passed by the House of Commons. The Upper House introduced certain amendments, including one by which important constitutional questions were to be submitted to referendum. The Government declined to accept these amendments, and Mr. Asquith announced that if they were persisted in, it would be his duty to advise the king to create enough fresh Peers to secure the passing of the Bill substantially in the form in which it left the House of Commons, and that the sovereign would feel it his duty to act on this advice, if given.

Under these circumstances the great majority of Unionist Peers determined to abstain from voting, but 114—the "Die-hards" as they were nicknamed—resolved to maintain their opposition to the Bill. Thirty Unionist Peers and fourteen bishops voted with the Liberal Peers in

order to avert the necessity for the creation of a large body of fresh Peers, and by a majority of seventeen the Lords decided not to insist on their amendments.

The Parliament Act provides that a public Bill rejected by the Lords in two successive sessions, shall, if passed by the Commons a third time, become law notwithstanding the opposition of the Lords. It also provides for the limitation of the length of Parliament to five years.

The practical effect of these provisions seems likely to be the crowding of all contentious legislation into the first three years of the life of Parliament. This will not be altogether a disadvantage if it leaves the House of Commons free for dealing with non-contentious legislation in the last two years, and so restores to the private member the opportunity for contributing useful measures to the Statute Book.

Reform of the House of Lords. The limitation of the legislative veto of the Upper House is avowedly intended to be a preliminary to a reform of the constitution of the House, which will be certain to take the form of a partial or complete abandonment of the hereditary principle, and the constitution of a Second Chamber, either wholly elective or partly elective and partly nominated. The real difficulty is to devise a Second Chamber efficient and independent enough to act as a check on hasty or ill-considered legislation, and yet not strong enough to weaken the sense of responsibility of the House of Commons. No serious student of our Constitution can doubt that a Second Chamber, representing not the propertied classes, but the highest trained intelligence of the country, and free from those considerations of party advantage by which the leaders of the various parties in the House of Commons are bound to be influenced, would be an asset of the greatest value to the nation.

The proposal to give this reconstituted House of Lords the right, under certain conditions, to demand a *referendum* or poll of the people, on specific proposals, is one that the Unionist party has now adopted as part of its programme. Liberal statesmen have urged the difficulty of grafting such a proposal on to our present constitutional system. The question is part of the larger question of the relation of members of Parliament to their constituents, on which more will be said in the next chapter.

CHAPTER XXI

PARTIES AND PARTY ORGANIZATION

THE history of modern political parties in England may be said to begin with the Reform Act of 1832. After the passing of that Act the old Whig party tended to fall into two sections, of which the more moderate became known as Liberal, while the section that accepted the Act as only an instalment of reform adopted the name of Radical. A somewhat similar process of change was going on in the Tory party, the followers of Peel's more progressive ideas exchanging the name of Tory for Conservative.

Rise of modern parties.

The thirty years that separated the first and second Reform Acts were a time of some confusion in regard to party allegiance. The Corn Law question caused a split in the Conservative party, the "Peelite" section of which, after lasting for a number of years as an independent body, was ultimately absorbed in the ranks of the Liberals. In the Liberal party the personal ascendancy of Lord Palmerston, who belonged to the Whig section, tended constantly to create schism. After his death, Liberalism became a united force under the leadership of Mr. Gladstone. At about the same time Mr. Disraeli began to "educate" the Conservative party into sympathy with the new conditions created by Parliamentary Reform, and so created a

formidable opposition. The rise of the Irish Nationalist party after 1870 complicated the political situation, and the split over Home Rule in 1885 placed a section of the Liberal party in a position very like that of the Peelites of a generation before. The Liberal-Unionists may be regarded now as a wing of the Conservative party. The rise of a Labour party, and the defection of a small body of Conservatives on the Tariff Reform question, have in recent years further complicated the problem of party organization.

It would be impossible to state in any short formula the difference that separates the two historic parties in Great Britain. According to Sir Erskine May, "the parties in which Englishmen have associated have represented cardinal principles of government—authority on the one side, popular rights and privileges on the other. The former principle, pressed to extremes, would lead to absolutism—the latter, to a republic; but, controlled within proper limits, they are both necessary for the safe working of a balanced constitution. When parties have lost sight of these principles, in pursuit of objects less worthy, they have degenerated into factions." Liberals and Conservatives

As a broad generalization this may be true, but it is difficult to apply to the conditions of any given time. One reason for this is, of course, that a considerable proportion of the members of both parties are very near to the border-line that separates one party from the other. The Conservative party is constantly being recruited by defections from the Liberal party, while progressive Conservatives cross the border-line in the other direction. The fact that the differences between the two parties are largely of degree rather than of kind greatly facilitates the work of government, and prevents each political party, when returned to power, from repealing all the work of

its predecessors. To the onlooker the atmosphere of compromise that characterizes the contest of parties sometimes gives an air of unreality to the whole system. But it is quite certain that, without this "sweet reasonableness" underlying the play of Parliamentary forces, the present system of Government would soon become impossible. There are "rules of the game" that the leaders on both sides are pledged to observe. But this does not imply any lack of moral earnestness on either side.

It is one of the most striking facts about our constitutional system that party does not merely influence our political machinery from without, but actually forms an integral part of that machinery. The Prime Minister is also the leader of a political party, and the Cabinet is also a secret meeting of party chiefs. The Junior Lords of the Treasury are the party Whips, the chief Whip holding the office of Parliamentary Secretary to the Treasury. It is through the chief Whip that the party leaders administer the large funds placed in their hands by supporters of the party—sometimes, it is to be feared, in grateful recognition of honours conferred, or to be conferred, on the donors.

Party organization.

The development of party organization outside Parliament began after the Reform Act of 1832, in the form of Registration Societies, whose object was to see that all duly qualified electors of the party were on the register. But the real birthtime of the modern party machine was 1867, when the passing of the Reform Act added the town artisan to the electorate. The Birmingham Liberal Association was the first party organization to establish itself on a representative basis, and the example was followed throughout the country by both political parties. By a careful regulation of the Liberal vote, the Birmingham

Liberals, succeeded in preventing the return of a Conservative as the third member for the city, and in 1873, under the guidance of Mr. Chamberlain and Mr. Schnadhorst, the Association began to "run" the municipal elections. In 1877 a number of the representative Liberal Associations joined to form the National Liberal Federation. After 1867 the Conservative party also built up a large number of local organizations, and after 1880 these became representative in character. In 1887 the National Union of Conservative Associations was remodelled on a representative basis.

The development of local party organizations has had a great influence over the relation of members of Parliament to their constituents. For the local associations have not only claimed the right to select the candidate—often from a list of names sent down by the chief Whip—but also to exercise a certain control over his actions in Parliament. The amount of this control will vary, a popular local magnate being less likely to tolerate interference than a man whose local influence is slight. But underlying the relations of the candidate to his association is the larger question whether a member of Parliament is a delegate or a representative. There is a decided tendency at present to press the former conception unduly. The doctrine of the "mandate"—that is, that a government is only justified in proposing measures in Parliament if they have been already, at least in outline, submitted to the electors—may easily be developed into an assertion of direct, in place of representative democracy. The same tendency appears in the proposals, to which the Unionist party is now committed, for engrafting the Referendum on to our political system. In as far as a member of Parliament is regarded as the delegate of his constituents, pledged to vote, on their behalf, for certain measures, the

Relation of members to constituents.

discussion of legislation in Parliament, except in regard to mere details, becomes a sham. Nor is it easy to see how it will be possible to secure the services of the best men—who will be least likely to be prepared to commit themselves beforehand to a cut-and-dried programme—under a system that reduces the possibility of personal initiative to a minimum.

The National Liberal Federation.

When the local associations united to form national party organizations, these bodies not unnaturally laid claim to a voice in the shaping of the policy of the party. In 1877 the National Liberal Federation, then in process of formation, asserted as the essential feature of its programme the principle of "the direct participation of all members of the party in the direction, and in the selection of those particular measures of reform and of progress to which priority shall be given." Mr. Gladstone gave his benediction to what he called "this wider and holier principle." From this time it became the habit of the Federation, year by year, to pass resolutions indicating the policy that it desired to see adopted by the party. Of these series of resolutions, the most famous were those of 1891, which were known as the "Newcastle Programme." They derived their importance from the fact that a Liberal ministry came into power in the following year, and was naturally expected by the Federation to adopt and carry out the programme. The result was that the ministers found themselves loaded with a burden far too heavy for any government to bear, and to this Lord Rosebery afterwards attributed the fall of the ministry. Since then the Federation has ceased, for various reasons, to act as "a Liberal Parliament outside the imperial legislature," and the policy of the party is dictated not from below but from above—not, that is, from the rank and file of the party, but by the leader in consultation with his chief lieutenants.

What Mr. Chamberlain attempted to do through the National Liberal Federation in 1877, Lord Randolph Churchill tried to do through the National Union of Conservative Associations in 1883. From time to time the National Union passed resolutions indicating what items should have a place in the programme of the party, but the leaders of the party steadily ignored them, and to-day both the National Union and the National Federation are organizations for the diffusion of political information and for assisting local organization, but neither has any effective voice in the shaping of the policy of the party. A Liberal or Conservative who disagrees with the policy of his leader has no resource but to resign his connexion with the party. Yet, though apparently autocratic, the party leaders are constantly feeling the pulse of the party, and it is the business of the chief Whip to keep them in touch with the feeling of their supporters, as gathered from reports of local association secretaries and from other sources.

The party system presents political life in the form of a contest, and by doing so makes it interesting to the ordinary man. It is undoubtedly true that it involves a considerable waste of administrative efficiency—half the ablest men in political life being, at any given moment, engaged in opposing the proposals of the other half—yet there is something in the contention that it is the form of political activity best suited to our national character. It has been remarked with some truth that if a body of Englishmen were wrecked on a desert island, they would fall naturally into two political parties, each with a leader and a programme! The party system.

By a salutary tradition that has grown up in recent years, foreign affairs are generally regarded as outside the scope of party contest, and it is probable that any grave,

question of foreign policy would form a matter for informal consultation between the leaders of the two great parties. It is much to be wished that questions affecting our first line of defence—the Navy—could be similarly treated. The precedent of 1885 may lead to such questions as Redistribution being discussed in informal conferences, though the experience of the recent Conference on the House of Lords is not altogether hopeful. The ordinary member will not be willing altogether to forgo the right to "drink delight of battle with his peers." But where fundamental national interests are at stake, party contest is silenced. For, however much parties may differ as to the best means, the end that they have in view is the same —"the safety, honour, and welfare of our sovereign and his dominions."

CHAPTER XXII

THE DEVELOPMENT OF THE EXECUTIVE

THE Cabinet may be said to have become a fully developed institution by about the beginning of the nineteenth century. It was, then, and is still, an informal gathering of such of "His Majesty's servants," as the Prime Minister may invite to meet him.

During the eighteenth century we find traces of a larger Cabinet, including such titular members as the Archbishop of Canterbury, the Lord Chamberlain, and others. The last occasion on which such a Cabinet was called together was in 1806, when the draft of the King's Speech was read.

The doctrine of collective responsibility had been growing gradually during the latter part of the eighteenth century, but was imperfectly understood even in 1806, when a discussion took place with regard to the inclusion of the Chief Justice in the Cabinet. Part of the reason for this imperfect understanding was the confusion between legal and political responsibility. Every minister is legally responsible for his own actions, and it would still be possible to impeach any minister of the crown for any illegal action of which he had been guilty; but for his political actions the whole Cabinet accepts responsibility. This idea of

Ministerial responsibility.

collective responsibility necessarily involves the consequence that "the arguments in the Cabinet" shall be "protected by an impenetrable veil of secrecy." It is now a clearly understood rule that no minister may disclose any proceedings that have taken place at Cabinet meetings without the express permission of the sovereign given through the Prime Minister.

In the early part of the century Cabinets were small. Pitt's Cabinet in 1784 consisted of seven persons, and the Cabinet of 1805 of twelve. But as the work of the Executive has grown, the size of the Cabinet has tended to increase, till it now generally includes about twenty ministers. One result of this has been a certain tendency for an inner circle to grow up within the Cabinet, in much the same way as the Cabinet grew up within the Privy Council. The Cabinet also works through committees, of which the Imperial Defence Committee is the most important.

The Prime Minister.

At the head of the Executive stands the Prime Minister. The office has never been legally recognized, and the name only appears twice in any state documents—in the Treaty of Berlin (1878), where Lord Beaconsfield describes himself as "Prime Minister of England," and in a sign-manual warrant of 1905, which gave the Prime Minister precedence next after the Archbishop of York. No salary is attached to the office, and, indeed, a Prime Minister holding no other office would not be a minister at all. As a matter of fact the Prime Minister always holds some other office, generally that of First Lord of the Treasury, to which no specific duties are attached. Besides the office of First Lord of the Treasury, there are three other offices—those of Lord President of the Council, Lord Privy Seal, and Chancellor of the Duchy of Lancaster—to which little

work is attached. The existence of these offices enables the Prime Minister to include in his Cabinet a few statesmen of experience, who, being free from departmental duties, are able to take a more general view of the political situation.

The Prime Minister is the leader of the political party or coalition of parties that has a majority in the House of Commons. He is therefore the only minister who can be said to be chosen by popular election. It is now generally considered that he should be a member of the House of Commons, though there is something to be said for the view that the exacting duties of leader of the House are incompatible with the wide general outlook that alone will enable a Prime Minister to rule his Cabinet wisely.

The supremacy of the Executive.

Since the last Reform Act, the control of the Cabinet over the House of Commons has tended to grow. The Government has, under modern rules of procedure, almost unlimited power to regulate the time table of the House, and it is becoming more and more difficult for even the most widely desired legislative measures to pass unless they are taken over by the Government.[1] The development of party organization in the constituencies has made the existence of the "independent member" almost impossible, and though a supporter of the Government may criticize its actions with impunity, he must "vote straight" under penalty of being repudiated by his local political supporters. A good many members are also committed to the support of their party through help given towards their election expenses from the party funds. It may be doubted whether the subordination of the Legislative to

[1] "To say that at present the Cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration."—Lowell, *The Government of England*, i. 326.

the Executive organ of government is in the best interest of the nation.

The King's Secretary.

Several of the chief offices of State have grown out of the office of King's Secretary, of which we first hear in the reign of Henry III. In the fifteenth century two King's Secretaries were appointed, and this was generally the case from this time. Under the Tudor sovereigns the Secretary became the most important officer of State next to the Lord Treasurer. The whole work of foreign relations passed through his hands, and he was also the responsible medium of communication between the sovereign and the Privy Council.

After the beginning of the eighteenth century the Secretaries became less King's Secretaries and more Secretaries of State. During the greater part of the century the two Secretaries divided their work on a geographical system, one Secretary taking the Northern Department, which included all relations with the northern powers of Europe, while the other undertook the Southern Department, which included not only southern Europe, but Ireland, the colonies, and home affairs. In 1782 the Northern Department Secretary became Secretary for Foreign Affairs, leaving his colleague responsible for home and colonial matters. In 1794 a third Secretary was appointed with special charge of war, and in 1801 colonial matters were also entrusted to him. The middle of the century added two more Secretaries to the list, the colonies being transferred to a separate Secretary in 1855, and a Secretary for India being created in 1858. Finally, in 1885, the office of Secretary for Scotland, which had lapsed in 1746, was revived, but strictly speaking the Secretary for Scotland is not a Secretary of State. The Irish Secretary is Secretary to the Lord-Lieutenant, and

when the Lord-Lieutenant is a member of the Cabinet the Secretary does not generally belong to it. The tendency now is, however, to include the Irish Secretary, and to give the Lord-Lieutenant a position more like that of a Governor of one of our self-governing colonies.

In theory the Secretaries of State are all part of one department, so that any one of them can legally act for any other. The Home Secretary ranks first in order of seniority, and he is, for many purposes, the intermediary between the crown and the people. He administers the royal prerogative of pardon, and deals with petitions of right, that is, petitions requesting permission to bring actions against the crown. He is also the guardian of the king's peace.

Next to the Secretaries of State, and the First Lord of the Admiralty, who is, for all practical purposes, Secretary of State for the Navy, are certain ministers who are nominally Presidents of Boards or Committees of the Privy Council. The Boards never meet, so that the President is in the position of a Secretary of State for his own department. There are five of these Boards—the Board of Trade, the Board of Works, the Local Government Board (the successor of the Poor Law Board of 1834), the Board of Education, and the Board of Agriculture.

Other offices of State.

It is unfortunately characteristic of the inadequate importance that we as a nation attach to education that the Presidency of the Board of Education is still regarded as a junior post among the offices of Cabinet rank. A consistent educational policy cannot be carried out by a department that has had four Presidents in five years.

The First Lord of the Admiralty is assisted by a body of four Sea Lords and a Civil Lord; and a similar Army

Council has recently been created to advise the Secretary for War.

The Civil Service

The actual work of government is largely in the hands of the permanent staff of the various departments. The Civil Service in this country is non-political, so that the permanent staff of a Government office does not change with every change of ministry. The degree to which a minister can impress his personality on the work of his department will depend on his own strength of character.[1] A minister unwilling to assert his authority may leave his department to work itself, which it may do very effectively if its permanent chiefs are competent. But as the minister may at any moment have to answer in Parliament for the actions of the department, he will, if he is wise, see that all the important work of the department is actually submitted to him. It is difficult to exaggerate the influence on departmental efficiency of the right of questioning ministers in Parliament.

We have in England no Minister of Justice and no Minister of Labour. The work that a Minister of Justice would do is now distributed between the Lord Chancellor (who occupies the unique position of being a high judicial officer who changes with every change of Government), the Home Secretary, and, to some extent, the Attorney-General and the Solicitor-General. The work of the Minister of Labour is at present partly in the hands of the Board of Trade and partly of the Home Office, the former being responsible for transport workers, the latter for mines and factories.

A few words may be said about three non-political

[1] "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked."—Sir G. Cornewall Lewis.

departments of Government that, for various reasons, are of special interest. The Comptroller and Auditor-General is an officer created by the Exchequer and Audit Act of 1866, holding an independent position, and responsible to Parliament for seeing that all monies paid out of the Exchequer are properly expended in accordance with the instructions of Parliament. The signature of the Comptroller and Auditor-General is necessary for all payments made by the Bank of England out of the Consolidated Fund. He presents an annual statement to Parliament showing the national income and expenditure that has passed through his hands.

The Comptroller and Auditor-General.

The Ecclesiastical Commission was established in the reign of William IV. for the administration of Church property derived from a rearrangement of episcopal revenues and from other sources. In addition to a large number of *ex-officio* members, there are a certain number of Commissioners appointed by the crown. The Commission makes an annual report, which is laid before Parliament.

Permanent Commissions.

A somewhat similar body is the Charity Commission, created in 1833 to deal with property held upon charitable trusts. An important security against abuse was provided by the fact that the Commission was a non political body, and it has been a grave misfortune that in 1899 all educational trusts were, by Order in Council, transferred from the control of the Charity Commission to that of the Board of Education, which is thus in the position of an administrative and also a judicial body, liable to the charge of admitting political bias into the interpretation of trust-deeds.

Before closing this chapter, it may be well to describe shortly the administration of national finance, as it affects

Financial business.

the relations of the Executive to Parliament. In the autumn of each year the great spending departments frame their estimates for the next year, and submit them first to the Treasury and then to the Cabinet. Before the end of March, when the national financial year ends, they are submitted to the House of Commons, which considers them in a committee of the whole House called the *Committee of Supply*. These discussions give the House its best opportunity for criticizing the Executive, a motion to reduce the salary of the Postmaster-General or President of the Board of Works being the recognized way of inaugurating a debate on the administration of the department in question. By a Standing Order of the House no resolution involving expenditure may be proposed except by a minister of the crown. The House has thus protected itself against sudden outbreaks of impulsive generosity. Ultimately, all the items of expenditure are gathered up in what is called the Appropriation Act. But besides the expenditure that is annually voted by Parliament, a sum of nearly forty millions is paid out of the "Consolidated Fund," and does not come up for revision every year. Thus, for example, the Civil List is voted to the king for life; the salaries of the judges and Auditor-General, the payment of interest on the National Debt, and a number of other items, are of the nature of permanent charges on the national income. In recent years a widespread desire has arisen for the creation of a small committee for the detailed examination of the estimates—a task for which a committee of the whole House is obviously unsuited.

The expenditure being settled, the Chancellor of the Exchequer brings forward his Budget, or proposals for taxation for the year. This is discussed by the whole

House in *Committee of Ways and Means.* When passed, the Budget is sent to the House of Lords, which has now lost its right to reject or amend it. Any balance of income over expenditure at the end of the financial year goes, unless the House decides otherwise, towards the reduction of the National Debt.

It may be interesting to give, in round figures, the estimates of national income and expenditure for 1910-1911:—

INCOME

Customs	£32,000,000
Excise	34,250,000
Estate and Death Duties	25,650,000
Stamps	9,600,000
Land Tax and House Duty	2,700,000
Income and Property Tax	37,500,000
Land Value Taxes	600,000
Post Office receipts and other items (including dividend on Suez Canal Shares)	27,300,000

EXPENDITURE

Consolidated Fund Services	£37,000,000
Army	27,750,000
Navy	40,600,000
Civil Service	42,700,000
Customs and Excise	4,000,000
Post Office	19,800,000

"Of the £37,000,000 due for Consolidated Fund Service, some £25,000,000 is required for provision of interest and sinking fund for the National Debt; of the £42,000,000 for the Civil Service, Education absorbs about £14,000,000 and Old Age Pensions over £9,000,000. On the Revenue

side, liquor and licences provide about £40,000,000 and tobacco about £14,000,000. Were the people suddenly to give up smoking and drinking, the Exchequer, as things are at present, would be bankrupt."[1]

[1] Marriott, *English Political Institutions*, p. 242.

CHAPTER XXIII

THE SELF-GOVERNING COLONIES

THE working-out of the constitutional development of our self-governing colonies is probably the most important fact in the constitutional history of the nineteenth century. The story of our earliest colonial constitutions belongs to the history of the United States. Into the causes of the War of Independence it is not possible to enter in detail here. There were faults on both sides, and historians will always differ as to whether the larger share of responsibility for the final secession should fall to George III. and his ministers or to the colonists. The war made it clear that the Home Parliament must never again attempt to tax the colonies for Imperial purposes, and it also left in the minds of British statesmen a strong disinclination to give self-government to our colonies, as it was supposed that such self-government would prove only a prelude to separation. The normal type of government under which our larger colonies were living at the beginning of the nineteenth century consisted of a Governor appointed by the Home Government, an Executive Council of officials nominated by him, a Legislative Council—a kind of colonial House of Lords—also nominated by him, and a Legislative Assembly elected by the colonists.

The colonial system of the eighteenth century.

The Canadian Constitution, 1774-1791.

It is in the Province of Canada that we find the earliest developments of constitutional progress. For the first few years after its annexation, Canada was under military rule, but in 1774 the Quebec Act gave to the French Canadians a rudimentary Constitution, consisting of a nominated Council to assist the Governor. This somewhat shadowy Constitution, together with the recognition of the religion and legal system of the French Canadians, kept Canada loyal during the War of Independence. After the war, a number of "United Empire Loyalists," desiring to remain under the British flag, migrated to Canada from the United States. They settled for the most part in Upper or Western Canada, and soon began to ask for self-government. So in 1791 the Constitutional Act was passed. By this Act Canada was divided into two Provinces, each of which was to have a Governor, a Legislative Council appointed by him, the members of which were to hold office for life, and an Assembly elected by the people on a liberal franchise.

The Act was passed by the British Parliament, the debate in the House of Commons being notable as the occasion of the final breach between Fox, who supported the bill, and Burke, who bitterly opposed it.

The Constitution of 1791 worked badly, for several reasons. The Governor was perpetually subject to interference by the Colonial Secretary at home, and the Executive Council was largely composed of inferior men, without any backing of public opinion. In Lower Canada the Legislative Assembly was of course strongly French, the British residents never succeeding in electing more than sixteen of the fifty members. The chief constitutional demand of the Assembly was that the Legislative Council should be made elective. But the constitutional question

was complicated by many other grievances, and in 1833 the Assembly declined to vote supplies. Four years later the discontent of both Provinces culminated in the "Canadian Rebellion," with Papineau in Lower Canada and MacKenzie in Upper Canada as its leaders. The risings were easily put down, but they obliged the Government to turn its attention to the Canadian problem, and Lord Durham, a peer of strongly liberal sympathies, was sent out as High Commissioner, taking with him two experienced advisers in Charles Buller and Edward Gibbon Wakefield.

In an extremely able Report, Lord Durham dealt with the results of his enquiries. The remedy he proposed for the constitutional deadlock was the adoption in Canada of the same system of responsible government that was in use at home. He pointed out that all that was needed to effect the change was for the Governor to be instructed to secure the co-operation of the Assembly, by entrusting the administration to those ministers who could command the support of a majority of its members. He recommended that the Governor should be informed that he could count on no aid from home in any difference with the Assembly that did not involve the deeper and more permanent relations between the mother-country and the colony. He also advised the Federal union of Upper and Lower Canada. Lord Durham's Report.

Lord Durham resigned in 1839, and was succeeded by Lord Sydenham, whom Lord Russell instructed to endeavour "to maintain the harmony of the executive with the legislative authority," and to make every effort to fill places of trust in the Province with native-born Canadians. In the following year Lord Russell brought forward a scheme for the government of Canada that incorporated much that Lord Durham had recommended. There was to

Canadian self-government, 1847. be one Province of Canada, with a Legislative Council and an Assembly. The full recognition of self-government followed in a few years, for when Lord Elgin went out as Governor in 1847 his instructions contained the clause that Lord Durham has proposed, by which he was ordered to choose his ministers from the party that was in a majority in the Assembly. The Governor's loyalty to the principle of responsible government was severely tested, for the Assembly had at the time a French majority, so the first responsible ministry was French. Difficulties arose, but they were gradually overcome, and the new experiment justified itself so well that in the same year New Brunswick and Nova Scotia obtained the same rights.

Canadian Federation, 1867. Twenty years later, the last change in the constitutional system of Canada was carried through by the British North America Act of 1867. For some time the North American colonies had discussed the question of closer union, and in the Federal system of the United States they found an illustration of how a number of States could be linked together while retaining their local self-government. By the Act of 1867 the two Provinces of Canada were again divided, becoming the Provinces of Ontario and Quebec. These two, with Nova Scotia and New Brunswick, formed a Federation. Provision was made for the inclusion of the other North American States, and Manitoba came in in 1870, British Columbia in 1871, and Prince Edward's Island in 1873. Only Newfoundland still remains outside.

The Federal Government of the Dominion of Canada consists of the king, represented by the Governor-General, the Senate, and the House of Commons. (Canada is the only colony that has adopted this name for its "Lower House.") The Governor-General is in the position of a constitutional sovereign, and is bound to act on the advice

of his ministers, excepting where Imperial interests are affected. The Senators are appointed for life by the crown, a certain number representing each Province, so that when a Senator dies, or becomes disqualified, the crown must select the new Senator from the same Province. The House of Commons is elected by the people, Quebec being represented by sixty-five members, and the other Provinces in proportion to their population as revealed in each census. The Act specifies twenty-seven matters that belong to the Federal Parliament. Another clause defines the matters that were left to the Provincial Legislatures. All matters not included in this latter list belong to the Federal Government.

In the Canadian Federation the States are distinctly subordinate to the Federal Government, which is their only medium of communication with the Home Government. It is in this way especially that the Canadian Constitution differs from that of Australia.

Australian self-government.

The growth of self-government in Australia was hampered at first by the fact that the earliest colony—New South Wales—was a penal settlement. However, in 1824, a Legislative Council of six was appointed to advise the Governor, Sir Thomas Brisbane. The Council gradually grew in size, and in 1842 consisted of twelve members, six elected and six nominated. In that year an Act of Parliament gave to New South Wales a Legislative Council, of which two-thirds were to be elected. In 1850 the same Constitution was given to Van Diemen's Land, South Australia, and Victoria, with a clause giving them the power to reform their own Constitutions, subject to the sanction of the Home Government. The years that followed were the years of the great gold discoveries in Australia, and of the consequent growth of population and wealth.

Meanwhile, the Customs Office had been transferred to colonial control in 1851, when England definitely adopted a free-trade policy. Shortly after, the revenue from gold licences was placed under the control of the colonial Legislatures. In 1852 transportation of criminals to Australia finally ceased. All these events led on to a desire by the colonies for full rights of self-government, and accordingly, in 1854, each of the colonies submitted schemes for amended Constitutions, and these were sanctioned in the following year, two of them by Order in Council, and the other two by Act of Parliament.

Each of the colonies adopted a wide franchise for the Lower House, South Australia becoming the pioneer of an adult male franchise. In regard to the Upper House they differed a good deal. New South Wales actually proposed a hereditary Upper House; this was subsequently changed to a nominated House. The other three colonies adopted an elective system, with a high property or educational qualification. A special interest attaches to the attempt of the Colonial Acts to define the Cabinet system. In this they were only partially successful, but, with the British model before them, they have been able to work their Constitutions on the same lines. New Zealand, to which a Constitution had been given in 1852, secured responsible government at about the same time as the Australian colonies.

Australian Federation.

The federation of the Australian colonies was due largely to the appearance of France and Germany as colonizing powers in Australasia. In 1883, when French claims on the New Hebrides were under consideration, the colonies adopted a scheme for a Federal Council, with power to legislate on certain subjects; but as New South Wales declined to join this Council, it proved of little value. The adoption of the

Australian Naval Defence Act in 1888 formed another link of connexion between the colonies. Finally, a Federal Convention met in Sydney in 1891 and drafted a complete scheme for a federation of the colonies. This was reconsidered at Adelaide in 1897. The Constitution was then submitted to the vote of each colony, and, after having been accepted by them all, was passed by the Imperial Parliament in July 1900.

The Australian colonies took the Federal Constitution of the United States rather than that of Canada as the model for their new Federation, or, in other words, they were more anxious to protect the rights of the States than to strengthen the Federal authority. The Australian Commonwealth is a completely democratic body. The Senate consists of representatives chosen by the States for six years, one-half retiring every three years. This gives to the Upper House a certain continuity of life. The House of Representatives contains twice as many members as the Senate, allocated to the States in proportion to their population. It is dissolved every three years. In case of a dispute between the two Houses, a joint sitting is provided for, or, under certain circumstances, a simultaneous dissolution.

It is too soon yet to say how the Australian Federation is likely to work. Up to now it has not altogether justified the hopes associated with its establishment. To enter on the reasons for this would take us too far into Australian political history.

South Africa.

The Canadian and Australian Federations were initiated by the colonies, and sanctioned by the mother-country. In the case of South Africa the attempt of Lord Carnarvon to use the influence of the Home Government to promote a Federal movement proved unsuccessful. In 1877 a permissive Federation Act was passed by the Imperial

Parliament, but the idea made little progress, the difficulties connected with the Transvaal proving an insuperable obstacle. These difficulties culminated in the outbreak of the Boer War in 1899. When the war was ended in 1902, South African Union seemed farther away than ever. But by an act of almost unparalleled magnanimity, the Liberal Government determined to give full self-government to the newly conquered States. Accordingly the Transvaal received responsible government in 1906, and the Orange River Colony in the following year. Cape Colony had been self-governing for a long time, and Natal had been given a responsible ministry in 1893. The four colonies now began to draw nearer to each other, and alternative proposals for federation and union into one State were brought forward. In view of the interdependence of the States, and the need of a common policy on the native question, railways and other matters, it was thought better to unite than to federate, and a convention was held in 1908 to draft a scheme of union, which was then submitted to the Parliaments of the four States, and in the case of Natal passed by a referendum. The Constitution was sanctioned by the Imperial Parliament in September 1909.

South African Union. The Union of South Africa is one of the most remarkable constitutional experiments ever tried. The attempt to weld into one State four provinces separated by deep-seated historical antagonisms, inhabited by two races that have only just emerged from a long struggle, is one that might well tax the highest political skill. Under the new Constitution, Boer and Briton meet on terms of complete equality. A Senate of forty members—eight from each province, and eight nominated by the Governor-General—and a House of Assembly elected by the four provinces in proportion to population, make up the legislative body.

The Cabinet system is incorporated in the new Constitution. The provinces retain no rights of sovereignty, and are only areas of local administration. It is too soon yet to attempt any verdict on the Union, but it is generally admitted to have started hopefully.

India under the Company

India is not a self-governing Colony, but it is convenient to consider the history of the government of British India in connexion with the other Federations in the Empire. Until 1781 the East India Company exercised complete sovereign power over a large part of India. In that year two Committees were appointed to investigate the affairs of the Company, and their Reports strongly condemned the conduct of some of their agents. In 1783 Fox brought forward his India Bill, by which the actual work of government was transferred to seven commissioners, nominated by Parliament in the first instance, and after that appointed by the crown. The Bill was bitterly opposed by the king, who resented the temporary withdrawal from his control of the appointment of the new commissioners and other officials. He accordingly used his influence to induce the House of Lords to reject the Bill, and then dismissed the Coalition ministry. One of Pitt's first measures, in 1784, was an India Bill that established a Board of Control to take over the political part of the work of the Company, leaving its mercantile rights unaffected. A double arrangement was thus set up not unlike that established in Rhodesia after the Jameson raid. This dual system, modified in some details from time to time, lasted till the Indian Mutiny. Meanwhile, in 1833, the Company lost its exclusive trading rights.

British India.

The Indian Mutiny led to the final dissolution of the Company, and the acceptance by the crown of full responsibility for the government of India in 1858.

The system of government then adopted has remained practically unchanged since. India, as defined by the Act, includes that part which is directly under British rule, and also more than six hundred native states that are, in varying degree, under British control. The authority of the Home Government is represented by a Secretary of State, who is assisted by a Council of ten or more members who hold office for four years. Nine of them must have served in India for not less than ten years. The Secretary is bound to consult his Council, but may override its opinion. He is of course guided in his policy by the Cabinet, of which he is a member. The Indian Budget is annually submitted to Parliament, but generally evokes little interest. In India the supreme authority is vested in the Governor-General or Viceroy, who is appointed by the crown for five years. He also is provided with a Council, consisting of six members, by whose advice he is bound to act under ordinary circumstances, though in certain grave eventualities he may act on his own responsibility, in which case any two members of the Council may require that the whole matter be submitted to the Home Government. For legislative purposes, the Council is increased by the addition of a number of members—generally about sixteen. All Acts passed by the Legislative Council are subject to the assent of the Home Government. For purposes of local government India is divided into six large provinces, and a number of smaller ones. Bengal, Bombay, and Madras have each a Governor and council appointed by the Home Government, and the United Provinces (Agra and Oudh), the Punjab, and Burmah, Lieutenant-Governors and legislative councils appointed by the Viceroy. The provincial administration is strictly under the authority of the Central Government.

In 1876 the Queen assumed the title of Empress of India (*Kaiser-i-Hind*). The government of India raises many problems with which it is impossible to deal here. The demand of a section of the native population for a larger share in the government has in recent years led to an agitation that has given cause for grave anxiety. Few people would contend that India is yet ripe for any extension of representative institutions, but it is very generally felt that a more sympathetic attitude on the part of the responsible authorities to native aspirations may do much to remove the discontent that now exists. It may safely be said that in undertaking the government of India, Great Britain assumed as difficult a task as any nation has ever undertaken, and though mistakes have been made, and will no doubt be made in the future, the record of our fifty years of rule is not one of which we have any cause to be ashamed.

Canada, Australia, South Africa, New Zealand, and Newfoundland constitute the group of self-governing colonies of the Empire. The other colonies may be classified into two groups—colonies having some kind of representative body, and crown colonies administered by a Governor, assisted generally by a nominated Executive Council.

Colonial Constitutions.

The Constitutions of the British colonies deserve a much more detailed study than is possible in a volume of this size. It is worthy of notice that all the self-governing colonies have some kind of Second Chamber, generally elective, and that in practically every case the control of financial matters by the Lower House is safeguarded by specific definition. Various methods have been adopted for dealing with deadlocks between the two Houses. By the Colonial Laws Validity Act of 1865, the self-governing

colonies are provided with full power to change their Constitutions, subject to the conditions laid down in these Constitutions themselves. The Australian Federal Constitution can only be changed if the proposed alteration has been passed by an absolute majority in both Houses, and has within six months been submitted to Referendum in each state. The Canadian Federal Constitution can only be amended in certain details by the Canadian Parliament; any important modification would require an Act of the Imperial Parliament.

All the self-governing colonies have adopted the Cabinet system, a certain number of "ministers without portfolio" being included in the Cabinet. The existence of offices like that of President of the Council and Lord Privy Seal, to which practically no duties are attached, provides for this need in the British Cabinet. Several matters, which at home are conventions of the Constitution, are explicitly laid down in the Constitutions of the self-governing colonies, as, for example, that Parliament shall meet every year.

In practically all the Colonial Legislatures the members of the Lower House are paid, and in several cases the members of the Upper House also. It is commonly provided that seats should be vacated by absence for a whole session, and a colonial member can resign by written notice, and so does not need to apply for the Chiltern Hundreds as a way of vacating his seat. Most Colonial Parliaments dissolve every three years, a few only lasting as long as five.

It is a remarkable fact that British political institutions, transplanted into lands whose local conditions differ widely from our own, are able to "take root downward and bear fruit upward." In the modifications that our political institutions in this country are likely to undergo in the

future, the experiments made by our own colonies will often prove of great value. The Referendum, Female Suffrage, elective Upper Houses, the distinction between constitutional and ordinary legislation are among the subjects in regard to which we can draw on the experience of our colonies.

CHAPTER XXIV

THE HOME GOVERNMENT AND THE COLONIES

THE relations between the Home Government and the colonies, in as far as it falls within the scope of constitutional history, illustrates the habit of "muddling through" that a distinguished statesman has told us is characteristic of our nation. The history of colonial administration begins with the Restoration, when a Committee of the Privy Council was formed for looking after the "Plantations." After various changes, a Board of Trade and Plantations was set up in 1695 to advise the King in Council on colonial matters. During the eighteenth century many changes occurred. In 1768 a Colonial Secretary was appointed, but the office was abolished in 1782, and the colonial work transferred to the Home Office. In 1786 a new Committee for Trade and Plantations was constituted. This Committee has now become the Board of Trade. In 1794 a Secretary of State for War was created, and the colonial business was transferred to his department. This exceedingly unsatisfactory arrangement lasted till 1854, when the two departments were separated and a Secretary of State appointed for colonial matters. Even after this the Colonial Secretaryship was regarded as a somewhat

Development of colonial department.

unimportant office till Mr. Joseph Chamberlain, by his acceptance of the office in 1895, gave it a new significance, and "by his imaginative and sympathetic policy made himself the most conspicuous figure of the Cabinet, and the most popular Englishman throughout our colonial possessions."

In his Report, Lord Durham pointed out two reasons for the failure of our colonial administration in the early part of the nineteenth century. The first was the frequent changes in the office of Secretary of State. He says that in the ten years since 1827 there had been no less than eight Secretaries in charge of colonial affairs. This meant that the minister responsible for colonial policy had not time to become personally acquainted with the work of his department, but also that no steady continuity of policy was possible. The other evil to which Lord Durham drew attention was the entanglement of colonial questions with party politics at home. Both these evils have now been to some extent rectified, the first by the development of a more competent permanent staff in the Colonial Office, and the other by the recognition that under ordinary circumstances colonial affairs lie outside the arena of party contest. Criticism of Lord Durham

It is at least possible that the ineffectiveness of colonial administration in the earlier part of the century was not altogether a disadvantage. It gave the colonies themselves more scope for working out their own destiny, and encouraged Colonial Governors to act on their own initiative, depending rather on local opinion than on instructions from headquarters. But it certainly had an irritating effect on the colonies, and might have led to serious difficulties if the intervention of other nations in the work of colonization had begun earlier. This intervention has had

two important results. It has brought colonial questions within the general sphere of international relations, and so given them a new importance; and it has drawn the colonies nearer to the mother country through a sense of common danger.

The authority exercised by the Home Government over the colonies is nominally of two kinds—Legislative and Executive.

Authority of Home Government.

The Legislative power belongs to the general legislative supremacy of the Imperial Parliament. But the British Parliament has expressly abandoned the right to impose any tax on the self-governing colonies, and though such a tax, if imposed, would be legally valid, it is quite certain that it would be constitutionally invalid and practically ineffective. By a similar understanding the Imperial Parliament does not legislate for the internal government of these colonies, though Imperial legislation may affect the colonies in various ways. It is now a constitutional understanding that before any Act of Parliament is passed that affects any of the self-governing colonies, the Colonial Governments shall be consulted. Sometimes Acts are passed by the Imperial Parliament at the request of the Colonial Governments, especially in regard to matters like extradition, bankruptcy, bigamy, offences committed at sea, and other matters that are partly internal and partly external.

Legislative.

Executive.

The legislative authority of the Home Government is growing less and less important, but the executive authority of the crown is much more effective. All Colonial Governors are appointed by the crown, generally for six years. They are of course nominated by the ministry in power, and are appointed by a commission under the Royal sign-manual. Each Governor also receives on appointment

a body of instructions, and further instructions are sent to him from time to time from the Home Government. In a self-governing colony the Governor is in the position of a constitutional sovereign in regard to all internal affairs. But he is also the guardian of Imperial interests, and these may bring him into conflict with the local ministry. The Governor may reserve a bill presented for his assent for the king's pleasure—that is, for the consideration of the Home authorities. Even if he has assented to a bill, the Home Government has the right within two years to disallow it. Of course these rights are hardly ever exercised, for it is part of the business of the Governor, by private conferences and in other ways, to avoid open friction between the authorities at home and in the colonies.

Powers of Colonial Governors.

Besides his political duties the Governor has important social functions to perform. "He is able to present to the inhabitants of the colony wider views and higher aims in political matters than might otherwise prevail in a small community, namely, the views and aims of the best men in the British Empire as contrasted with those of men who are versed only in local politics. He can promote the interests of education, science, art, commerce, and humanity outside the domain of party politics."

There are two definite limits to the legislative power of Colonial Legislatures. They have full power "to make laws for the peace, order, and good government of the colony," but any Act of a Colonial Legislature which claims extra-territorial powers will be treated by the colonial courts as invalid. Then, secondly, by the Colonial Laws Validity Act no colonial law is valid which is "repugnant to the laws of England." The interpretation of this phrase is a technical legal question into which we cannot enter now. Broadly, it means that a local legis-

Colonial legislation.

lative body cannot supersede or change an Imperial law extending to the colony, and that certain principles of English law are valid throughout the Empire. Thus, for example, no colonial legislative body could sanction slavery, torture, or bigamy.

Treaties made by the Home Government with foreign powers bind all the colonies, but it is the custom for the self-governing colonies to be consulted in regard to any treaty in which their interests are directly affected. In view of some recent discussions, it may be well to say that in the event of war between the Empire and any other power no colony of the Empire could declare itself neutral.

The Judicial Committee of the Privy Council.

In judicial matters the Empire is a unity, an appeal lying to the King in Council from every court in the Empire. A difficulty arose on this question between the Home Government and the Australian colonies at the time when the Federation Act was being passed in the Imperial Parliament. A clause of the Act, as originally drafted, appeared to the Home Government to limit unduly this right of appeal. After long negotiations the clauses were redrafted, so as to provide that on constitutional questions an appeal should only lie if the High Court in Australia certified that the question was one that ought to be determined by the King in Council.

Petitions from colonial courts are heard by a body called the Judicial Committee of the Privy Council—a body that has, absurdly enough, taken over the ecclesiastical jurisdiction of the old Court of Delegates. The same court has therefore to pronounce on the validity of the action of our self-governing colonies and on the legality of ecclesiastical ceremonial. The Judicial Committee consists of all Privy Councillors who have held high judicial office, together with the Lords Justices of Appeal, and since 1895

certain colonial judges have been added. Technically, the business of the Judicial Committee is to advise the king, and it does not give a judicial decision by the verdict of a majority, as is the case with the House of Lords.

Imperial defence.

Apart from the bond of community of race, language, traditions, and history by which the Empire is held together, the two most important links of connexion between its parts are those of trade and defence. The proposals that have been made in recent years for drawing the trade relations of the Empire closer lie outside the scope of constitutional history, but the problem of Imperial defence has a close bearing on the future constitutional relations of the component parts of the Empire. At present by far the largest share of the burden of Imperial defence falls on the mother-country. The self-governing colonies have in recent years shown an increasing willingness to share in the burden, either by undertaking to provide for their own local defence, or by contributions towards the upkeep of the Imperial Navy. But the problem of Imperial defence involves the problem of Imperial policy, and if the colonies are to contribute to defence, it is inevitable that they should ask for a voice in the determination of policy.

To some small extent this has been secured by the conferences attended by the Premiers of the self-governing colonies, of which the first was held in 1902, and which it is intended to hold at intervals of about four years.

Any further development of constitutional relations must depend on the growth of a feeling in favour of such developments both at home and in the colonies. Any attempt to "force the pace" might easily prove disastrous. It is possible that the menace of some external danger might lead to the rapid crystallization of the idea of Imperial Federation, in much the same way as the appeal

ance of European powers in Australasian waters brought about the federation of Australia.

Imperial Federation. Schemes for Imperial Federation have generally taken one of two forms. Either it has been proposed that subordinate legislative bodies should be created for dealing with the local affairs of England, Scotland, Ireland, and Wales, and that the Imperial Parliament, thus left free for Imperial business, should include representatives from the colonies. Or, as an alternative, it has been suggested that an Imperial Council should be established, consisting of representatives from the Home and Colonial Parliaments, to deal with matters of Imperial interest.

The self-governing colonies, rightly jealous of their independence, would be disposed to examine with some distrust any scheme that appeared to trench on their powers, and it is from them that the initiative of any successful scheme must come. Already we have Sir Wilfrid Laurier's challenge: "If you want our aid, call us to your councils." The British Empire may be destined to develop into an alliance of sister-nations for mutual defence, or into a self-contained Federal Commonwealth. The problem of the British Empire—and it is rapidly becoming the problem of the United States as well– is the problem of combining Imperialism with a democratic system of government. The solution must be found in the recognition that Imperialism and democracy are both founded on the same call to service, for true Imperialism is based on the idea that the Anglo-Saxon race has a contribution to make to the world's life that it can only make fully if it holds together, while democracy is a system of government that seeks to elicit from every man his own special contribution to the life of the nation—to enlist all in the service of all.

CHAPTER XXV

ENGLISH LOCAL GOVERNMENT

(1) *The Counties.*

To the constitutional historian local government is important, in the first place, because it is in local institutions that the political genius of a nation will show itself, more clearly perhaps than in its central government. The student of German or American institutions would gain a very inadequate idea of the special characteristics of the political life of Germany or America unless he studied the local government of these nations. And, in the second place, because it is local government that affords the training-ground for political life. Knights of the shire, justices of the peace, county and borough councillors, all bring to the central legislature the experience gained in local administration, and if the local political life of a nation is corrupt or inefficient, the whole body politic will be the same.

The history of English local government falls naturally into four periods. The first of these ends with the Norman Conquest and the establishment of strong central authority. The second ends with the practical disappearance of the County Court, and the transfer of the administrative work

Periods of English local government.

of the county to the justices of the peace. The third ends with the County Councils Act of 1888, which placed local government in the counties, nominally at least, on a democratic foundation.

Mediæval local government

Of the earliest period I have said something in a previous chapter. It centres in the Shire Court, which retained something at least of its ancient democratic character. The Norman Conquest established a strong central administrative system, which shows its influence in the practical disappearance of the Ealdorman or Earl from the local administration, and the increased importance of the sheriff. The Norman kings preserved the old local system as a check on the feudal courts, and the Angevin kings established a new link between the central authority and the local courts in the itinerant justices. The sheriff was no longer the sole representative of the central government. But this was only one of several changes that weakened his authority. The growth of local feudal courts, and the development of chartered towns, restricted his area of jurisdiction. And the appointment of guardians of the pleas of the crown (*custodes placitorum coronae*), in 1194, deprived him of a large part of his judicial work.

The sheriff

In the early Norman period the sheriffs were tending to grow into great hereditary local magnates a tendency checked under Henry I. by the appointment of men of lower rank to the office. Fifty years later the office had again fallen into the hands of great local nobles, but a final blow was given to the local independence of the sheriffs by the Inquest of Sheriffs in 1170, when Henry II. suddenly removed all the sheriffs and appointed a commission of itinerant justices to report on their behaviour. Very few of the dispossessed sheriffs were reinstated, their places being taken by royal officers from the Exchequer Court.

In a word, local government became, for a time, bureaucratic.

Magna Carta forbad sheriffs to hold any pleas of the crown, and so finally abolished the judicial powers of the office. The sheriff remained the commander of the *fyrd* or militia of the county, till the appointment of Lord-Lieutenants under Mary. In 1258, and again in 1340, the tenure of office of the sheriff was limited to a year.

While the sheriff was losing his ancient powers, he gained one new power as the returning-officer for the counties and boroughs in Parliamentary elections. A sheriff is disqualified from sitting for his own shire—a fact of which Charles I. took advantage in 1626 by pricking off his leading opponents as sheriffs.

Of all the many duties that formerly fell to him, the sheriff now only retains the duty of meeting the judges, executing their sentences, personally or by deputy, and acting as returning-officer for county elections.

The decline of the sheriff coincides with the rise of a new officer—the justice of the peace. At the end of the twelfth century, the preservation of the royal peace was placed in the hands of certain knights in each shire, before whom every one had to take oath to maintain the peace. Hence grew up the office of conservator of the peace. At first these conservators of the peace were "little more than constables on a large scale," but in 1328 they began to exercise judicial functions, and in 1360 they became justices of the peace. Two years later these justices began to hold regular Quarter-Sessions. In the years that followed, almost all the work that still remained to the Shire-Court was transferred to the justices, and the old Shire-Court passed out of existence, losing even its elective rights with the passing of the statute limiting the franchise to

The justice of the peace.

forty-shilling freeholders. Needless to say, the modern County Court, set up in 1846 for dealing with minor debt cases, has no sort of connexion whatever with the old Shire-Court.

The justices of the peace grew in importance with the development of local administrative work that was such a marked feature of the Tudor period. They were appointed by the crown as agents of the central authority, but their interests and associations were in the district in which they served. As I have already said, it was the justice of the peace that saved England from becoming a bureaucratically governed country in the sixteenth century. Had the Tudors carried on the work of local administration through officials sent down from head quarters, English local government would have lost its most distinctive characteristic—the subordination of the expert to the unpaid elected amateur.

Even to enumerate all the work that fell to the justice of the peace under the Tudor system would be a large task More than a hundred statutes were passed in the course of the sixteenth century, adding fresh responsibilities to the already burdened justice. Besides his judicial work he had to fix wages, supervise the apprenticeship system, fix the price of commodities, enforce the recusant laws, control the new Poor Law administration, punish "vagrom men," and act as a medium of communication between the crown and the county in which he served.

For four centuries the justice of the peace remained the central figure of English local administration, and Quarter Sessions the Shire-moot of the county. Before we deal with the County Councils Act of 1888, let us turn to the smaller areas of local administration.

The smallest unit of all was originally the vill or

township, and this becomes, after the Norman Conquest, the manor, with its manorial courts and overlord. The next chapter in the history of the village we can only read in fragments. The parish priest appears as the central figure of a constitutional struggle that lasted through the thirteenth and fourteenth centuries. The old township meeting was revived as the parish meeting or vestry, and this democratic assembly, under the guidance of the priest, gradually took over the administrative work of the manorial court. This parish meeting elected the local officers of the village, of whom the churchwardens, whose business it was to administer whatever property the parish possessed, were the most important. The parish accounts were also presented at this meeting. "Thus, by the end of the fourteenth century, each parish was an organized democratic community, managing its own affairs, and managing them well." The parish.

When the Elizabethan statesmen set on foot the new system of poor relief, they chose the parish as the unit of Poor Law administration, and created a new body of officers called overseers to carry out the work of relief.

Between the shire and the township, the Anglo-Saxon local system interposed the hundred. But the growth of feudal liberties reduced the importance of the Hundred Courts, and by the middle of the fourteenth century they had practically faded out of existence. The hundred remained merely a geographical subdivision of the county. The hundred and other local areas.

The next attempt to create an intermediate area between the parish and the county belongs to the history of the Poor Law. In 1723 an Act was passed allowing parishes to combine for poor relief purposes. The Poor Law Unions thus created were, by the Poor Law Amendment Act of 1834, made the units for Poor Law administration instead

of the parish. The vestry had already lost most of its effective powers in rural parishes, and become primarily an ecclesiastical institution.

In the years that followed, areas of local administration grew up in a confused and unsystematic way. The sanitary reforms of the century created urban and rural sanitary districts; the Education Act of 1870 created School Board areas; there were Burial Board Districts and Highway Districts, and various other areas of local administration.

Act of 1888. The Local Government Act of 1888 began the work of bringing system out of this administrative disorder, and also placed the government of the counties on a democratic basis. By this Act England was divided into sixty-two administrative counties and sixty county boroughs. Each county had a County Council consisting of councillors elected for three years by the ratepayers of the county, the number varying according to the size of the county, and certain aldermen co-opted for six years, who were not to exceed in number one-third of the councillors. To these Councils all the administrative work of Quarter-Sessions was transferred, leaving to the justices the judicial work of the county. A joint committee of justices and county councillors was set up to control the county police. By Acts of 1889 and 1902 the control of education in all its departments has been given to the County Councils.

Act of 1894. Six years later, the District and Parish Councils Act of 1894 carried the reorganization of local government a stage farther. In every parish the old democratic parish meeting, acting for itself, or (in parishes with a population of over 300) through a Parish Council elected by it, was re-established. Between this parish council

area and the county the Act set up a new Rural or Urban District Council, for sanitary, highway, and Poor Law affairs.

The central authority that controls all these local councils is, for most purposes, the Local Government Board. The Poor Law Amendment Act of 1834 set up a central Poor Law Board, and the Public Health Act of 1848 established a General Board of Health, which was subsequently absorbed in the Home Office. In 1869 a Commission reported strongly in favour of the creation of a special department for supervising local government. "There should be one recognized and sufficiently powerful minister, not to centralize administration, but, on the contrary, to set local life in motion." So in 1871 the Local Government Board was constituted, absorbing the old Poor Law Board, and the Public Health Department from the Home Office.

The Local Government Board.

The Local Government Board has been granted considerable legislative power by Parliament, chiefly in the form of power to make regulations under various Acts. It also grants provisional orders to local bodies, which it submits to Parliament for confirmation all in one bill. All bye-laws of local bodies must be confirmed by the Local Government Board.

The Poor Law department of local government is under very close Local Government Board supervision. The accounts of all local authorities, excepting boroughs, are audited by the Board, which has the right to "surcharge" any illegal expenditure. No loan can be raised by any local body without the consent of the Board. Besides all this, the Board is constantly advising local authorities on a variety of subjects, and, in some cases, stimulating them to exercise the powers conferred on them by Parliament.

County Council Committees.

As County Councils are only required to meet once a quarter, the actual business of the county is done chiefly in committees, of which most Councils have a large number. For some purposes joint-committees are appointed. These committees often possess larger powers than the committees of a Borough Council. The only limitations imposed by the Act are, that every committee shall report to the Council, and that no committee shall have the power to raise money by rate or loan. The only committees that are required by the Act of 1888 are the Standing Joint-Committee, for the management of the police, and the Finance Committee, without the sanction of which no Council may spend any sum of more than £50. The Education Act of 1902 has added a third statutory Committee for Education.

The scope of the work of a County Council may be seen from a list of its committees. The committees of the Warwickshire County Council are as follows: Finance; County Roads and Bridges; County Buildings; Small Holdings and Allotments; Sanitary; County Rate Basis; Executive (Diseases of Animals); Asylum Visiting; Education (with nine Departmental Committees and twenty-seven Sub Committees); Standing Joint; General Purposes; County Boundaries; Charities; Wild Birds' Protection Act; Financial Adjustments; Printing; Gosberry Mildew.

The present system of county administration has been called "government by horse and trap," by which phrase is meant that the size of a county area practically precludes the working class from being directly represented in the County Councils. County Council elections seldom provoke any great excitement, and the actual government of the counties remains largely in the hands of the same class that formerly administered its affairs in Quarter-Sessions. But the fact that the councillors now act as elected

representatives, instead of as Government nominees, tends to promote efficiency of administration.

Parish Councils. Parish Councils have not as yet fulfilled the hopes of their more earnest advocates. The chief reason for this is that the country labourer is not in a sufficiently independent position to be able to give open expression to his opinions. Where the local squire has taken a personal interest in fostering the instinct of self-government encouraging results have sometimes followed. But the rebuilding of these local units of political life constitutes a part of the whole problem of the restoration of village life that is perhaps the most vital problem of our time.

The two most striking characteristics of English local government are the supremacy of the amateur and the system of committees.

The supremacy of the amateur. With regard to the first, British institutions show in every direction the same tendency. In judicial matters, a committee of amateurs, called a jury, decides cases with the advice of an expert—the judge. In executive administration, the minister of the crown, with no expert knowledge of his department, has full authority to disregard the expert opinion of his permanent staff. In Petty Sessions a bench of magistrates, with no legal training, depends on the advice of the magistrates' clerk, who is a legal expert, and in our Borough Councils the amateur councillors rule with the advice of the Town Clerk and other municipal officials. Even the sovereign may be regarded as occupying the position of expert adviser of his responsible ministers. To recognize how distinctive of English life this is, we have only to compare our local institutions with those of Germany, where the expert rules with an advisory council of amateurs to help him.

It is not easy to say why our national institutions have

taken this direction. Perhaps it may be regarded as a kind of compliment paid to humanity It is certainly more consistent than any other system with the ideals of democracy, which has no worse enemy, if it only knew it, than bureaucracy.

The committee system.

The committee system, as it has developed in English local government, is interesting, because it illustrates the divergence between our central and local constitutional systems. The central authority is administered by a committee (the Cabinet) chosen exclusively from one party, of which a majority of the members are responsible for different departments of administration. Instead of individual ministers, the local system has developed a series of committees composed of both parties in proportion to their representation in the Council, each with a chairman occupying a position somewhat like that which a minister of the crown would occupy if his "Board" was a reality instead of a mere form. The chairman of a County Council, if a man of strong personality, may sometimes come to occupy almost the position of a Prime Minister. This is still more the case with the mayor of a borough. But the tradition that in all our most progressive boroughs precludes the re-election of a mayor for more than two or at most three years, prevents him from becoming identified with the permanent leadership of a party.

Let me close this chapter with some words by a foreign student of our institutions. "At last class rule, in so far as it rested on law and Constitution, has been totally abolished (in English local government), and England has created for herself 'self-government' in the true sense of the word—that is to say, the right of her people to legislate, to deliberate and to administer through Councils or Parliaments elected on the basis of popular suffrage,

with a civil service of municipal and imperial officials entirely subordinated to the popular will in law and in fact. The one great and wholesome limitation upon the sovereignty of the people, apart from the anomaly of a hereditary chamber, lies in the existence of a pure and independent judiciary, which makes it impossible for any person or combination of persons, even the Government itself, to break the law with impunity. The authorities which have power to make laws and bye laws have power to change but not to infringe them. The people are law-abiding as well as law-making. And this is the root of the incomparable strength and health of the English Body Politic."[1]

[1] Redlich and Hirst, *Local Government in England*, i. 216.

CHAPTER XXVI

ENGLISH LOCAL GOVERNMENT (*continued*)

(2) *The Boroughs.*

The borough and the overlord.

THE English towns, when they first appear in history, are only larger villages, defended by a rude rampart or stockade, and dependent on some overlord who exercises almost absolute authority over the townsfolk. "The lord might destroy their industry by suddenly calling out the inhabitants to follow him in a warlike expedition, or demanding services of forced labour, or laying on them grievous taxes; his officers could throw the artisan or merchant into his prison, or ruin them by fines, or force upon them methods of law hateful and dangerous to their conceptions of a common life: as he claimed supreme rights over the soil it was impossible for a burgher to leave his property by will; and on the tenant's death officers visited his house and stables and granaries to seize the most valuable goods as the lord's relief. It was necessary to gain his consent before any new member could be admitted into the fellowship of citizens; and without his permission no inhabitant might leave the borough to carry his trade elsewhere. He could forbid the marriage of children arranged by the fathers, or refuse to

allow a widow to take a new husband and so make him master of her house and freeman of her town. He fixed the market-laws and the market tolls. He forced the people to grind at his mill and bake at his oven."[1]

From this state of almost complete subjection, the English towns gradually rose to a condition of almost complete independence. The process of emancipation began soon after the Conquest, and culminated in the fifteenth century. The actual course of events differed in each town, but the general lines of advance were the same. We may class the privileges secured by the English boroughs under the three heads of judicial, financial, and administrative. Rights of chartered towns.

(1) Judicial. The earliest privilege that marked off a borough from a township was the right to have its own Hundred Court, and so to be represented in the County Court by twelve men, as the hundreds were. The next stage was the grant of immunity from the jurisdiction of the County Court, so that at last the borough becomes a self-contained area of jurisdiction, subject only to the authority of the itinerant justices. The Port-moot of the borough becomes for the borough what the Shire-Court was for the county. Judicial

(2) Financial. One of the earliest privileges secured by the towns was the right to compound their taxes with the sheriff, arranging among themselves how much each burgher should pay. Then they secured the further right to pay the *firma burgi* direct into the royal exchequer, so getting rid of the authority of the sheriff altogether. Financial

(3) Administrative. Under this head may be included the right to elect their own officers, of whom the chief comes to bear the name of *Mayor*; the right to freedom Administrative

[1] Mrs. Green, *Town Life in the Fifteenth Century.*

from trial by battle; the right to emancipate a serf who has lived for "a year and a day" in the town; and lastly, the right to have a Merchant Guild.

The Merchant Guild.

What was the relation of this Merchant Guild to the governing body of the borough? To answer that question we must first remember that privileges such as those that I have enumerated were not secured without considerable difficulty.

A charter had to be obtained from the king or the local overlord, and for this charter a heavy price had to be paid. The leading traders of the town would have to find the money, and the actual administration of the new system would naturally fall into their hands. In return for the money that they had provided, they asked for the right to regulate the trade of the town, or, in other words, to "have a Merchant Guild." The entrance fee paid by a citizen on joining the Merchant Guild might be regarded as his contribution towards the original cost of the charter. But the same men also met as a Borough Council, either elected as a matter of course by their fellow-citizens, or, in some cases, nominated by each other, so that in many towns the Merchant Guild and the Borough Council were practically identical. In name, the constitutions of the boroughs in the fourteenth century were democratic, but in fact they were probably from the first, what they became more completely as time went on, oligarchies.

It is important to notice that the development of the English boroughs proceeded by the way of charter. The French *Commune* differed from the English chartered town in this, that while both had the legal status of collective persons (that is, both had the right to hold possessions, to bring actions, and do other legal acts collectively) the French Commune was a person within the feudal system.

while the English borough was outside it. A French Commune could act as collective overlord or vassal, and was liable to feudal obligations. But in England the growth of the boroughs was the first great blow struck at the feudal system.

Parliamentary representation.

In the thirteenth century the boroughs were called to take their place in the national representative system, and in the Parliaments of the early part of the fourteenth century over two hundred borough members sat side by side with the seventy-four knights of the shire.[1] It was left to each borough to decide for itself how its representatives were elected, and thus the franchise for boroughs came to vary greatly.

It was not till the fifteenth century that the legal idea of a "Corporation" became definitely fixed. From that time onward "incorporation" became the name for the grant of self-government to a town. Up to the reign of Charles II. the grant of incorporation always carried with it the right to send representatives to Parliament.

Political corruption.

From the beginning of the Tudor period to the year 1835 the history of the English boroughs is the history of the sacrifice of local efficiency to the "packing" of Parliament with nominees. The Corporations became close oligarchies, with hardly a trace of popular election left in their composition. Clarendon's Corporation Act closed them to Roman Catholics and Nonconformists, but in the eighteenth century this Act became practically a dead letter, an annual indemnity bill being passed by Parliament in

[1] "For the maximum number of boroughs we must go back to Edward I., when 166 was reached. During the first half of the fifteenth century it had fallen to 99. After 1445 it begins to increase a little. Henry VI. added eight new boroughs, Edward IV. added or restored five." Maitland, *Constitutional History of England*, pp. 173-174. Henry VIII. added 5 boroughs, Edward VI. 48, Mary 21, and Elizabeth 60.

favour of any who had broken the provisions of the Act.

"A great number of Corporations," says the Report of 1835, "have been preserved solely as political engines, and the towns to which they belong derive no benefit, but often much injury from their existence. To maintain the political ascendancy of a party, or the political influence of a family, has been the one end and object for which the powers entrusted to those bodies have been exercised. This object has been systematically pursued in the admission of freemen, resident or non-resident; in the selection of municipal functionaries for the council and the magistracy; in the appointment of subordinate officers and the local police, in the administration of charities entrusted to the municipal authorities; in the expenditure of corporate revenues; and in the management of corporate property."

Report of Royal Commission.

One of the first results of the Reform Act of 1832 was the appointment of a Royal Commission to report on municipal government in England. The Report revealed an extraordinary condition in borough administration. Jobbery and corruption reigned supreme in most of the boroughs. The great mass of the citizens had no share in the government of their town, municipal councils being in many cases self-electing. In large towns the number of freemen was often a few hundred at most.

As a result of this, such municipal administration as was done, was, to a large extent, in the hands of other bodies. In the words of the Report: "It has been customary not to rely on the municipal Corporations for exercising the powers incidental to good municipal government. The powers granted by local Acts of Parliament for various purposes have been from time to time conferred, not upon the municipal officers, but upon trustees or Commissioners

distinct from them, so that often the Corporations have hardly any duties to perform. They have the nominal government of the town, but the efficient duties and the responsibility have been transferred to other hands."

The conclusions of the Commissioners are briefly summarized in the concluding words of the Report: "We therefore feel it to be our duty to represent to your Majesty that the existing municipal Corporations of England and Wales neither possess nor deserve the confidence or respect of your Majesty's subjects."

The result of the Report was the Municipal Corporations Act of 1835 one of the most important measures ever placed on the Statute Book. By this Act the control of municipal government was placed in the hands of the people, with a wide ratepayers' franchise. The council meetings were made public. The aldermen ceased to be magistrates, the borough justices being henceforth appointed by the crown. Municipal Corporations Act of 1835.

The Act at first dealt only with 178 boroughs. In 1883 about eighty ancient boroughs were extinguished, and 25 brought under the Act. More than a hundred new boroughs have been created since 1835 by Order in Council or Act of Parliament. Of the number of boroughs then existing, rather more than three hundred the County Councils Act of 1888 raised sixty-four to the status of county boroughs, and about a dozen more county boroughs have since been created. To obtain the status of a county borough a town must have a population of over 50,000.

The Corporation of a modern town consists of the mayor, aldermen, and burgesses of the town, or in the case of a city, the mayor, aldermen, and citizens. The actual governing body consists of the mayor, aldermen, and councillors. Councillors are elected for three years, one-

third retiring each year. Aldermen are elected by the councillors, and hold office for six years. They represent in municipal administration what a Second Chamber represents in central government, excepting that they do not form a separate House, but sit and vote with the rest of the Council. The mayor is elected by the Council, the central authority exercising no kind of veto over his appointment, as is the case with the German Burgomeister. The only two officers that a Council is legally bound to appoint are a Town Clerk and a City Treasurer.

Borough Councils. The powers of Borough Councils are very large and are constantly increasing. The Education Act of 1902 transferred to them the control over all grades of education, and many Poor Law reformers desire to see the work of poor relief or "public assistance" also placed in their hands. Besides the compulsory powers of a Council, a number of Acts have been passed—"Adoptive Acts" as they are called, —that a borough may adopt either by popular vote or in other ways. A borough may also increase its powers by Private Act.

A marked feature of recent years has been the growth of "municipal trading." Most progressive English towns now provide their own water, gas, and electric light. Many of them run their own trams, and own their own cemeteries, markets, and baths. A Borough Council, like a County Council, does most of its work through committees, but the committees do not generally possess powers as extensive as those of County Council committees.

Committees. To attempt any survey of the scope of town government within the limits of this chapter would be an impossible task. A list of the committees of the Birmingham City Council will perhaps help to show how varied and extensive that work is. They are as follows: Finance;

Watch; Baths and Parks; Markets and Fairs; Estates; General Purposes; Industrial School; Public Works; Tramways; Health; Lunatic Asylums; Free Libraries; Museum and School of Art; Education; Housing; Gas; Water; Electric Supply. Of these committees, only three—the Finance Committee; the Watch Committee, which controls the police; and the Education Committee—are statutory. A Council may have as many committees as it chooses.

A feature of municipal politics, for which Birmingham was first responsible, has been the extension to local affairs of the party system, and the use of the party machine for running municipal elections. Attempts have been made to defend this system, but in the opinion of the present writer the effects of it on municipal life are altogether disastrous. Men who would gladly serve the civic life of their community are prevented from doing so because they will not bow down before the prevailing party fetish, which is generally wholly unconnected with the problems of local administration. Important questions of municipal administration are settled at secret party conclaves, and come before the Council as foregone conclusions. Party politics in local affairs.

The real difficulty is the incurable apathy of the elector. The strenuous exertions of party agents just avail to drag a certain percentage to the poll; without this stimulus it may be doubted whether 40 per cent of the burgesses would trouble to vote at all. There is a curious irony in the fact that democracy breaks down in local life, because the sovereign people will not take the trouble to exercise the powers that have been conferred on it.

Besides the difficulty of persuading electors to vote, there is the difficulty of finding men of the right kind to serve on Borough Councils. The successful business man

is often unable or unwilling to give the time, and the leisured man to equip himself with the knowledge needed for the work; and in our smaller English boroughs the Council often consists of small tradesmen unaccustomed to deal with large problems, with a sprinkling of political adventurers, and of men who are suspected of having interests of their own to serve. That these towns are as well governed as they are is due to the ability of the permanent officials. But there is no question that if the larger possibilities that are opening before our English towns through such measures as the Town Planning Act are to be realized, men must be found with larger ideals and wider outlook to lead the advance of municipal well-being.

The growth of such organizations as the Workers' Educational Association is an encouraging evidence of the desire of the workers to equip themselves for the responsibilities of citizenship. In this alliance of labour and education lies the promise of nobler civic ideals; in the alliance of both with religion lies the best hope of their realization.

CHAPTER XXVII

CHURCH AND STATE

THE question of the relations of Church and State has come before us incidentally in the course of our survey of the history of the Constitution. It may be worth while, before we close, to say a little more about this matter. Perhaps the best way to deal with it will be to take the Church in England at three periods of its history, and consider its relations with the State, as far as they lie within the scope of constitutional history.

Let us take, as our first period, the end of the thirteenth century. "The mediaeval theory of the relation between Church and State seems this, that they are independent organisms, consisting, nevertheless, of the same units. Every man, we may say, is a member of both." The Church, like the State, has its system of law—the Canon Law of the whole Western Church—its own courts, and its own deliberative assemblies. In spiritual matters the Church of England recognizes the authority of the pope, in temporal matters the authority of the king. The main cause of difficulty comes in defining what is temporal and what spiritual. On the one side, the royal courts treat benefices as a form of property, over which they can exercise control; and on the other side, the pope is con- Church and State in 1300.

stantly extending his claims over the temporalities of the Church. In three ways especially the claims of the pope are growing in the thirteenth century. In judicial matters, the appellate jurisdiction of the papal court is increasing, and continued to increase till checked in the following century by the statute of Præmunire, and by other causes.

Financially the Crusades have given the papacy the right to exact contributions from the Western Churches, and by the Bull *Clericis laicos*, issued in 1297, Boniface VII. denied the right of the secular authority to levy taxes on the estates of the Church—a denial that Edward I. met by outlawing the clergy when they refused to contribute to national expenditure, and so compelling them to submit. And, thirdly, the claim of the pope to "provide" candidates for bishoprics and benefices was an encroachment on rights of presentation, which Parliament tried to prevent by the statute of Provisors in 1351.

As yet, the spiritual authority of the pope has not been challenged, but Parliament is jealous of any attempt to withdraw the Church of England, as an organized body, from connexion with the national life. Edward's conception of the Church in England is that it shall be both national and catholic.

Convocations. From Anglo Saxon times the bishops and other Church dignitaries had met in provincial synods, the mutual jealousies of Canterbury and York having prevented the development of a National Church Assembly. The Norman bishops organized regular diocesan synods, at which all the clergy of the diocese were present. In the provincial synods the parochial clergy were not represented till 1283, when Archbishop Peckham summoned representatives of the cathedral chapters and of the parochial clergy. The two Convocations thus established gave to the ecclesiastical

estate a representative organization, and so enabled the clergy to resist the efforts of the king to compel them to be represented in Parliament. Convocation continued to vote clerical taxes till 1662.

The question of the authority of Canon Law in the mediaeval Church in England is too complex to enter upon here. Dr. Maitland[1] has shown that in the fourteenth century the Roman Canon Law was recognized as authoritative in this country. The nature and extent of the authority of the Church courts was a constant source of friction during the whole mediaeval period.

The Church in England, in the thirteenth century, is the nation organized for religious purposes under a definite body of officers (bishops and clergy), who are protected by special immunities, and who recognize the spiritual authority of the pope and the royal supremacy in temporal matters.

Church and State under Elizabeth.

The reign of Elizabeth provides a second convenient halting-place in the history of the Church. The conditions of the reign of Henry VIII. were abnormal, and no other English sovereign has ever claimed such powers as the special circumstances of the time enabled him to exercise. Under Elizabeth the relations between Church and State resumed their normal character. In Elizabeth's conception, the Church is still the nation organized for religious purposes, though the existence of the adherents of the old faith, and of some small bodies of sectaries, makes the assumption no longer correspond with the fact. The repudiation of papal authority has left the English Church with no recognized spiritual head, since such powers of the papacy as have not lapsed have passed not to the archbishop but to the crown. The queen is "supreme governor" by the Act of Supremacy, and the Act of

[1] Maitland, *Roman Canon Law in the Church of England.*

Uniformity has established what may be called a concordat between Church and State, of which the Prayer Book is the outward and visible sign. Having settled this concordat, it was the policy of the queen to refuse to allow Parliament to interfere with the exercise of her ecclesiastical authority. The royal authority over the Church flowed through the channel of the bishops, the High Commission Court and other Church courts, and the Convocations, just as the secular authority of the crown flowed through the channels of the ministers of state, the Courts of Justice, and Parliament. The queen claimed no more right to interfere with spiritual matters than she did to interfere with common law rights. The only difference between the two was that Parliament could supersede existing common law by statute, whereas it required both Parliament and Convocation to change the religious basis of the concordat.

The Reformation has brought Convocation much more directly under the authority of the crown. By the Act for the Submission of the Clergy, in 1534, Convocation can only meet by royal permission, and can only legislate with royal consent. Appeals from the Church courts were, by the same Act, to go to the king in Chancery. In 1559 the Court of Delegates was established to hear such appeals, and nearly three hundred years later this work was taken over by the Judicial Committee of the Privy Council.

Church and State after 1688.

We may take the Revolution as our third halting-place. By this time the attempt to warn off Parliament from interference with Church matters has entirely failed. The Test and Corporation Acts have kept Parliament as an assembly of churchmen, though the Church has long ceased to be coextensive with the nation. After the Revolution, Parliament becomes less and less an exclusively Church

body. The legal theory of the Church, as comprising all baptized persons within the realm, still remains, and constitutes the Church of England the residuary legatee of whatever is not claimed as their own by other religious bodies.

Convocation has become ineffective for two reasons. In the first place, it is an exclusively clerical body. If the Church had offered to support the repeal of the Test and Corporation Acts in return for the right to a representative assembly of its own, many difficulties of after-times would have been avoided. But, besides its exclusively clerical character, Convocation was weakened by constant quarrels between the Upper House, composed for the most part of Whig bishops, and the Lower House, which was strongly Tory. Finally, in 1717, Convocation was prorogued, and was not summoned to meet again till 1861.

The description "established by law" was first applied to the Church of England in a canon of 1604, but did not come into general use till after the Revolution, when some title was needed to distinguish between the National Church and other religious bodies. It implies that, in return for certain services done by the Church for the nation, the State gives to it recognition and protection. It is important to distinguish the special relations included in this term from the general authority that the State exercises over all religious bodies holding property. Any religious body desiring to make any fundamentally important change in its doctrine or method of organization would, in the present condition of the law, require the sanction of the State, given through Parliament, unless it has no buildings or other property. A disestablished church could only free itself from this measure of State control by divesting itself

"Establishment"

of all that it had.[1] But the Church of England has certain relations with the State beyond those that belong to it as a corporation, or rather a great collection of corporations, holding property. "Not only is the Church unable to make new canons without the royal assent, but its liturgy and articles of religion have a parliamentary sanction; though not made by Parliament, they have been accepted by Parliament, and therefore they need the combined action of Church and State for their alteration."[2] The law of the Church is part of the law of the land, and the Church courts exercise statutory authority. Convocation is summoned by royal sanction, and the leading officers of the Church—the bishops—are nominated by the crown. The election by the cathedral chapter of the diocese is little more than formal, but the spiritual authority to exercise the episcopal office is given not by the State but by the Church. On certain occasions the Established Church represents the nation in its religious aspect, and most of the bishops sit in the House of Lords as representatives of the religious life of the community. All these things together make up that relation between Church and State that is expressed in the formula "established by law." Like other parts of our constitutional system they have grown out of the circumstances of history, and can only be understood in the light of that fact.

Endowments.

The history of the endowments of the Church does not

[1] The unsatisfactory position of the law in regard to the question of the continuity of religious corporations was shown in the case of the Free Church of Scotland in 1904, when a decision of the courts, by which the property of the Church was declared to belong to a small minority, who has declined to agree to the amalgamation of the Free Church with the United Presbyterian Church, was reversed by an Act of Parliament. (*Free Church of Scotland v. Lord Overtoun.*) The decision practically declared that a religious body is incapable of doctrinal development without loss of continuity of identity.

[2] Anson, *Law and Custom of the Constitution.*

fall within the scope of constitutional history. As a matter of fact the Church of England, as such, holds no property, each parish, cathedral chapter, or diocese being a separate corporation holding property in trust for local purposes. Every parishioner has a legal right to attend the services of his parish church, and even his right to Holy Communion is protected by the law. An incumbent is also protected by the law in the possession of his freehold rights in his benefice. Whether all these arrangements are an advantage to the Church, regarded as a spiritual community, may be doubted, but it is worth while to remember that they are not of the essence of "establishment." If it is thought desirable to give constitutional expression to the intimate connexion between the religious and political life of the nation, this may be done in many other ways besides that which has developed through the circumstances of our national history. The Established Church of Scotland, for example, has larger powers of self-government than the Church of England. The General Assembly of the Church of Scotland, unlike Convocation, has a considerable proportion of lay members, and does not require "letters of business" or licence from the crown to legislate on Church matters, within the limits of its legislative powers.

The restoration to the Church of England of a larger measure of self-government is desirable both as a means of relieving Parliament of one department of work, and also as a means of ensuring that questions affecting religion shall be dealt with by men professing some religious belief. It will be seen, even from this brief survey, that the relation between the Church and the State has varied greatly at different periods of our history. It is not likely that the present conditions will be permanent, but it is not clear that the entire repudiation by the State of all connexion

with religion is the best solution. Cavour's conception of "a free church in a free state" is an attractive ideal, but if it is interpreted to mean that it is a matter of indifference to the State whether its citizens profess any religion or none, it may lead to an impoverishment of national ideals. It is in the sphere of national education that the problem becomes most pressing. Any attempt on the part of the State to formulate a system of religion is bound to end either in a revival of State control of opinion or in a colourless scheme of rational ethics. But the claim that provision should be made in our national educational system for children, whose parents so desire, to be taught the religion of their parents, is one that should commend itself to all who value religious liberty; and in some of our colonies it has not been found impracticable.

BIBLIOGRAPHY

A.—HISTORICAL

(a) General

MAITLAND. The Constitutional History of England.
MEDLEY. English Constitutional History.
TASWELL-LANGMEAD. English Constitutional History.
CREASY. Rise and Progress of the English Constitution.
FREEMAN. Growth of the English Constitution.
STUBBS. Constitutional History (to 1485).
HALLAM. Constitutional History (1485-1760).
ERSKINE MAY. Constitutional History (from 1760).
GNEIST. History of the British Constitution.

(b) Special Subjects

PIKE. Constitutional History of the House of Lords.
PORRITT. The Unreformed House of Commons.
S. WALPOLE. Electorate and Legislature.
LOWES DICKINSON. The Development of Parliament in the Nineteenth Century.
DICEY. The Privy Council.
BLAUVELT. Development of Cabinet Government in England.
POLLOCK AND MAITLAND. History of English Law.
ROUND. Feudal England.
MCKECHNIE. Magna Carta.
OSTROGORSKI. Democracy and the Organization of Political Parties.
TAYLOR. Origin of the English Constitution.
PETIT DUTAILLIS. Studies and Notes supplementary to Stubbs.
B. AND S. WEBB. English Local Government.
MAITLAND. Township and Borough.
CARTER. History of English Legal Institutions.
EGERTON. British Colonial Policy.
HOLLAND. Imperium et Libertas.
TODD. Parliamentary Government in the British Colonies.
MRS. GREEN. Town Life in the Fifteenth Century.

(c) DOCUMENTS

STUBBS. Select Charters.
PROTHERO. Statutes and Constitutional Documents (1559-1625).
GARDINER. Constitutional Documents of the Puritan Revolution
ROBERTSON. Select Cases and Documents (1660-1894).

B.—LEGAL AND PHILOSOPHICAL

ANSON. Law and Custom of the Constitution.
DICEY. Law of the Constitution.
MAY. Parliamentary Practice.
ILBERT. Legislative Methods and Forms.
LECKY. Democracy and Liberty.
MAINE. Popular Government.
BOSANQUET. Philosophical Theory of the State
MASTERMAN. Parliament and the People.
FIGGIS. The Divine Right of Kings.

C.—DESCRIPTIVE

(a) GENERAL

A. L. LOWELL. The Government of England.
ILBERT. Parliament.
COURTNEY. The Working Constitution of the United Kingdom
HEARN. The Government of England.
BOUTMY. The English Constitution.
LOW. The Governance of England.
BAGEHOT. The English Constitution.
J. A. R. MARRIOTT. English Political Institutions.

(b) SPECIAL SUBJECTS

MILL. Representative Government.
REDLICH. The Procedure of the House of Commons.
J. A. R. MARRIOTT. Second Chambers.
MCKECHNIE. Reform of the House of Lords.
REDLICH AND HIRST. Local Government in England.
ASHLEY. Local Government.
ODGERS. Local Government.
JENKS. Local Government.
JENKYNS. British Rule and Jurisdiction beyond the Seas.
TROTTER. The Government of Greater Britain.

INDEX